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ABSTRACT

Designed to tell the school board member what New Jersey school law requires and permits, this second edition of "Basic School Law" avoids exploring the complex legal issues that gave rise to the regulations discussed. Dropping the first edition's chapter on labor law, this edition adds material on the sunshine laws regarding the conduct of school business in public, and on the "thorough and efficient" law defining the educational standards set in the New Jersey constitution. Areas of school law continued from the first edition include (1) the legal structure of education in New Jersey (authority, institutions, and the administration of school law), (2) school district structure, (3) authority and makeup of school boards, (4) the educational environment, (5) student rights and responsibilities, (6) school management, (7) personnel, (8) school budgets, (9) school elections, and (10) school district business practices. An appendix describes the operations of state and federal court systems as they affect school systems. The subject matter index is designed for practical reference use. (Author/PGD)

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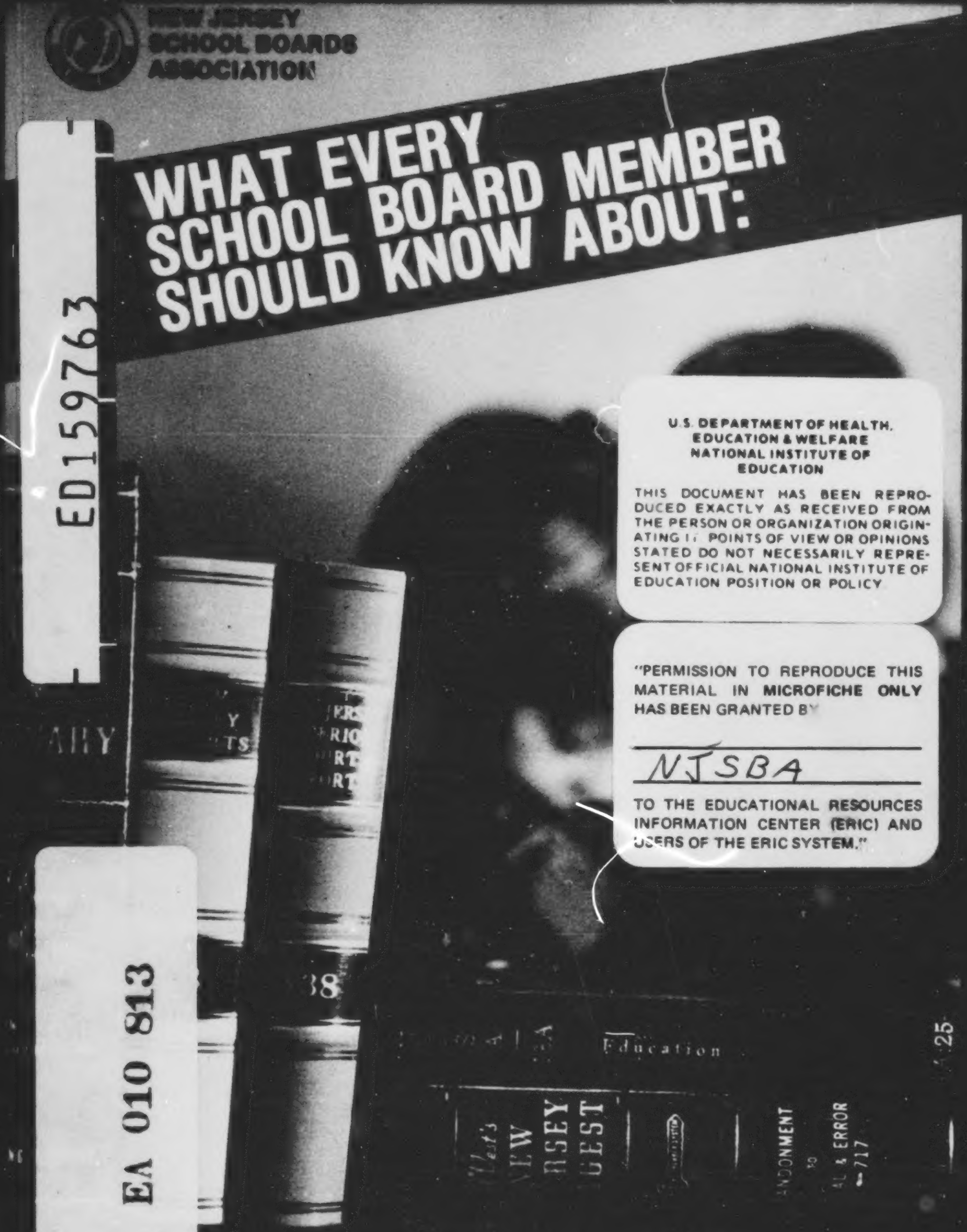

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BASIC SCHOOL LAW

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NEW JERSEY

BASIC

SCHOOL LAW

by

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Foreword

The first edition of Basic School Law, published in 1973, inaugurated a whole series of publications of the New Jersey School Boards Association, a library of "What Every School Board Member Should Know." The later volumes address a wide range of topics of concern to board members, from board policy-making to labor relations.

It is, of course, no secret to experienced board members and administrators that the laws governing school districts are constantly evolving. We have witnessed many important, and sometimes dramatic, changes in the education laws in the past few years. This revised volume should serve to keep board members abreast of important developments in this area and to help boards thread their way through the maze of often complex laws and regulations affecting school districts.

More than any other single factor, the school laws shape and define the task which board members have undertaken in pursuit of a meaningful and productive educational experience for children. Whether this volume is used for background reading or as a reference tool, we are certain that it will impart a basic knowledge of these laws, a knowledge essential to effective school boardsmanship.

The NJSBA is grateful to the authors and the entire Legal Department staff for their efforts on this project.

Lloyd J. Newbaker, Jr.
Acting Executive Director
New Jersey School Boards Association

Trenton, New Jersey
April 5, 1978

PREFACE TO THE FIRST EDITION

Basic School Law replaces a volume last reprinted in 1969, *What Every School Board Member Should Know,* which is now commemorated in the title of the new NJSBA library series.

We approached this project with the hope of providing the reader with the basic notions of the school laws in New Jersey, telling what's required and what's permitted, without getting into any overly complicated "whys". In reporting the law as it is, rather than as it may become, we have purposely avoided discussion of the many complex legal issues which are currently being thrashed out in the courts and Legislature.

This volume is not a substitute for the opinion of local counsel. In all legal matters concerning the local school district, the board's attorney must be consulted.

The authors wish to acknowledge gratefully the assistance of Barbara Wecker, of Rutgers Law School, Newark, who did much of the basic research; Robert Rochford, also of Rutgers Law School, Newark, who is responsible for the index; Raymond P. Moats, NJSBA's graphics production manager, who put the fruit on the cover; and Denise Pearson, of the NJSBA staff, whose efforts on the manuscript forced her early retirement to Florida.

Robert P. Martinez
William J. Zaino

March 12, 1973
Trenton, New Jersey

PREFACE TO THE SECOND EDITION

We are happy to present the revised volume of *Basic School Law* covering changes in the laws governing education in New Jersey through the year 1977. This second edition also reflects several major legal developments which have occurred since the original edition was published in 1973, including new chapters on the Sunshine Law and "T&E Law" and an appendix providing some general information on the courts and administrative bodies which interpret the large body of statutory law. We have omitted the largely historical chapter on labor law, these issues being thoroughly covered in separate volumes of the "What Every School Board Member Should Know" series.

In keeping with the original design of *Basic School Law*, we avoided the obvious temptation to explore the many complex legal issues arising under the laws governing education. The intended product continues to be an introduction into the essentials of school law and a helpful reference volume for the more experienced reader.

We wish to acknowledge what we now know to be the Herculean effort of the authors of the first edition, Bob Martinez and Bill Zaino, whose clarity of statement, organization and format made our task so much more simple.

We also wish to thank Dave Carroll, NJSBA General Counsel and Nathanya Simon, NJSBA Assistant Counsel, for shouldering the entire workload of the department during the revision process and for their invaluable guidance and assistance on the text itself. Also, our sincere thanks to Francine Miller and Rosemary McGill for a marathon typing session on the manuscript carried out with the utmost of professional skill and responsibility.

Christine D. Weger

John E. Collins

Trenton, New Jersey
April 3, 1978

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Chapter I

The Legal Structure of New Jersey Public Education

"The powers not delegated to the United States by the Constitution . . . are reserved to the States respectively, or to the people."
— Tenth Amendment, U.S. Constitution.

A. The Flow of Authority to Educate

1. The Source Provisions

By virtue of the tenth amendment to the United States Constitution, the authority to provide public education is reserved to the individual states. The people of New Jersey have specifically made education a concern of state government since 1875, and the language of that mandate has not changed since then:

> *The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years.*[1]

This provision does not prevent the Legislature from providing education to persons who are not between five and eighteen years of age, however.[2] The Supreme Court has said that the area within which the Legislature may act to advance the public welfare is vast, and the Legislature must have leeway in deciding whether to act, and if so, how far to go.[3]

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[1] N.J. Const. 1947, art. 8, sec. 4, par. 1. Same provision appears in N.J. Const. 1844, art. 4, sec. 7, par. 6, by amendment of 1875.

[2] **Trustees of Rutgers College v. Morgan,** 70 N.J.L. 460 (Sup. Ct. 1904), aff'd 71 N.J.L. 663 (E. & A. 1904) See also F. Op. Atty. Gen., July 22, 1949, No. 82.

[3] **West Morris Regional Board of Education v. Sills,** 58 N.J. 464, 480 (1971).

On the other hand, the provision does impose upon the Legislature an affirmative duty of providing a thorough and efficient system of free schools for persons within the specified age group, and that system must afford "that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market."[4]

In addition to this specific school mandate, the New Jersey Constitution contains other provisions which define certain boundaries of the public education enterprise. These include most notably a section which provides that no person shall be segregated in the public schools because of religious principles, race, color, ancestry or national origin.[5] The constitution also guarantees that public employees shall have the right to organize and to present their grievances and proposals through representatives of their own choosing.[6]

Finally, the constitution specifically permits the Legislature to provide for the transportation of children within the ages of five and eighteen years "to and from any school," so long as there are "reasonable limitations as to the distance to be prescribed."[7]

2. The Sharing of Authority

Under New Jersey's constitutional form of government, it is clear that the authority and the power to educate are shared among several agencies. To the extent that "local control" has been taken to mean that the educational function of government is controlled exclusively at the local level, the notion of home rule becomes an unwarranted myth. In fact, New Jersey's educational system is based on a concept of lay control, not local control, and the exercise of that power is shared among officials at all levels of government.

Local political subdivisions, including school districts, are not sovereign entities.[8] They may readily be bridged when necessary to vindicate federal or state constitutional rights and policies.[9] This alignment of power does not in fact entail any general departure from the historic home rule principles and practices in New Jersey, but it does insure that constitutional mandates will be carried out.[10]

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[4] **Robinson v. Cahill,** 62 N.J. 473, 515 (1973).

[5] N.J. Const. 1947, art. 1, par. 5.

[6] N.J. Const. 1947, art. 1, par. 19.

[7] N.J. Const. 1947, art. 8, sec. 4, par. 3.

[8] **Jenkins v. Morris Township School District,** 58 N.J. 483, 500 (1971).

The New Jersey Constitution clearly and unequivocally places prime and absolute responsibility for education upon the state Legislature.[11] The Legislature may not delegate or abdicate to others its exclusive function to make the law, but it may delegate to governmental agencies or public officials the power and function to make subordinate rules or orders or findings of fact, within standards and policies prescribed legislatively.[12]

The power which the Legislature does delegate may be altered or withdrawn at almost any time. For example, the Legislature in New Jersey may alter the power of local school boards to abide by contracts they have previously entered, provided that any private parties involved assent to the change.[13] It may be said without jest in regard to delegated power, that what the Legislature giveth, it may taketh away.

Therefore, any consideration of the flow of educational authority in New Jersey must take into account the hard fact that this power is one which is voluntarily shared with local, county and state officials by the Legislature. In some areas of responsibility, the lawmakers have set mandatory standards by express statutory provision. In other areas the Legislature has delegated such authority to state level officials. And, in still other areas, local boards are vested with broad discretion to set their own standards. While some have been critical of the concentration of power in state level officials,[14] and others have sought to reaffirm the "large measure" of local autonomy which is possible under the present structure,[15] the touchstone of that structure is a concept of delegated and shared legislative authority.

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[9] **Id.** at 500.

[10] **Id.** at 500.

[11] **See Robinson v. Cahill, supra,** 62 N.J. at 508-09.

[12] **Pascucci v. Vagott,** 71 N.J. 40 (1976); **Burton v. Sills,** 53 N.J. 86 (1968), appeal dismissed 394 U.S. 812; **Veix v. Senaca Bldg. and Loan Assn.,** 126 N.J.L. 314 (E. & A. 1941).

[13] **Lenahan v. Board of Education of Lakeland Regional High School District,** 1972 S.L.D. 577; citing **City of Worcester v. Worcester R.R. Co.,** 196 U.S. 539 (1905) and **City of Trenton v. State of New Jersey,** 292 U.S. 182 (1923).

[14] Note, "Schools and School Districts—The Subtle Move Toward Total State Control," 2 Seton Hall L. Rev. 174 (1970).

[15] **Jenkins v. Morris Township School District,** 69 S.L.D. 27, 36; rev'd 58 N.J. 483 (1971).

3. The Doctrine of Implied Powers

As an assurance that governmental authority would properly flow to those who are to exercise it, the state constitution confers on local government via the Legislature, not only express powers, but also those powers which are necessary or can be fairly implied as incidental to those expressly conferred.[16] This is known as the doctrine of implied powers, and it has been applied to school districts.[17]

The Legislature has itself reasserted the doctrine of implied powers as applied to any public official or board operating under the school laws. Under a special validating provision, the Legislature has assured that state, county and local education officials will have the power to effectuate the actions called for by the education laws, regardless of whether or not the laws themselves grant that power.[18]

In addition to the foregoing, each major type of educational organization in New Jersey is expressly given broad implied powers: the State Board of Higher Education,[19] the State Board of Education,[20] and local boards of education.[21] Courts have utilized the doctrine of implied powers to reaffirm the responsibility of state officials for the conduct of local schools.[22] Although courts have similarly shown a willingness to find extensive implied powers in local boards of education,[23] there has been less imagination in utilizing implied powers at the local level.

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[16] N.J. Const. 1947, art. 4, sec. 7, par. 11.

[17] **Resnick v. East Brunswick Twp. Bd. of Ed.,** 135 N.J. Super. 257 (Ch. Div. 1975), aff'd o.b. 144 N.J. Super. 474 (App. Div. 1976), appeal pending before New Jersey Supreme Court; **Board of Education of Union County Vocational School v. Finne,** 88 N.J. Super. 91, 106 (Law Div. 1965); F. Op. Atty. Gen., 1962, No. 2; **Merry v. Board of Education of Paterson,** 100 N.J.L. 273 (Sup. Ct. 1924).

[18] N.J.S.A. 18A:2-1.

[19] N.J.S.A. 18A:3-16.

[20] N.J.S.A. 18A:4-16.

[21] N.J.S.A. 18A:11-1.

[22] **See Jenkins, supra,** 58 N.J. 483 and cases cited therein.

[23] E.g. **Porcelli v. Titus,** 108 N.J. Super. 301 (App. Div. 1969), certif. denied 55 N.J. 310 (1969); **Durkin v. Board of Education of Englewood,** 1971 S.L.D. 654, aff'd by State Bd. 1972 S.L.D. 669.

B. State Educational Institutions

1. Introduction

Under the state constitution, all the executive and administrative offices, departments and instrumentalities of state government must be allocated by law among not more than twenty principal departments of government, according to the major purposes they serve.[24] Until 1966, the entire education function was exercised by one department. By that time, however, the administration of the state educational enterprise had become so complex and specialized that these functions were divided into two separate areas, higher education and elementary-secondary education. Thus, the modern state educational structure takes up a full two of the fourteen principal departments of state government.

2. The Department of Higher Education

The public institutions of higher education in New Jersey include the six state colleges, the county colleges, the public junior colleges, the New Jersey College of Medicine and Dentistry, industrial schools, Newark College of Engineering (now the New Jersey Institute of Technology), Rutgers University and any other such institutions which are authorized by law.[25] Jurisdiction over these institutions is vested in a Department of Higher Education, which consists of a board of higher education, a chancellor of higher education, and several bureaus and administrative divisions.[26] The department's general charge is to assist in the coordination of state and federal activities relating to higher education, to advise the governor on the affairs and problems of higher education, to stimulate new programs in higher education through public relations and technical assistance, to encourage cooperative programs by existing institutions, and to act as a clearinghouse for information in this field.[27]

The State Board of Higher Education is composed of the chairman of the board of governors of Rutgers, the chairman of the board of trustees of New Jersey Institute of Technology, the chairman of the council of state colleges, the chairman of the council of county colleges, the president of the State Board of Education, a representative of the private colleges and universities who is designated by the Association of Independent Colleges and Universities with the approval of the governor, and nine citizens, all residents of the state, of whom at least two must be women.[28] The chancellor of higher education and the state Commissioner of Education are ex officio members without vote.[29] The citizen members of the board are appointed by the governor with the advice and consent of the senate and are selected as far as practicable on the basis of their knowledge of or experience in problems of higher education, and without regard to their political beliefs or affiliations.[30] Their term runs for six years.[31]

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[24] N.J. Const. 1947, art. 5, sec. 4, par. 1.

[25] N.J.S.A. 18A:62-1.

[26] N.J.S.A. 18A:3-1; N.J.S.A. 18A:1-1.

[27] N.J.S.A. 18A:3-3.

It is the duty of the board of higher education to advance long-range planning for the system of higher education as a whole in this state, and to establish general policies for the governance of the separate institutions.[32] However, the State Board of Higher Education does not actually administer the individual institutions of higher education, which have reserved to themselves specifically the right to administer their programs.[33] The overall thrust of the State Board of Higher Education is to coordinate the activities of these individual institutions, and to maintain general financial oversight of the entire state system.[34] To this end, the Legislature has mandated that the board of higher education carry out a number of specific tasks involving standards and minimum course standards, reviewing the development of a master plan, establishing admission standards and minimum course standards, reviewing budget requests, and setting other specific policies.[35]

The chancellor of higher education serves as the chief executive officer and administrator of the department and is charged with carrying out the policies and regulations promulgated by the State Board of Higher Education.[36]

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[28] N.J.S.A. 18A:3-6.
[29] N.J.S.A. 18A:3-6.
[30] N.J.S.A. 18A:3-8.
[31] N.J.S.A. 18A:3-8.
[32] N.J.S.A. 18A:3-13.
[33] N.J.S.A. 18A:3-13.
[34] N.J.S.A. 18A:3-13.
[35] N.J.S.A. 18A:3-14.

3. The State Department of Education

The general supervision and control of public education in this state, except for higher education as defined in the preceding section, is vested in the State Department of Education, a principal department in the executive branch of state government.[37] The State Department of Education consists of a State Board of Education, a Commissioner of Education, and other bureaus and administrative divisions, including the division of the state library, archives and history, and the division of the state museum.[38]

The New Jersey Constitution requires that each principal department of government be headed by a single executive unless otherwise provided by law.[39] Unlike the department of higher education, wherein the chancellor is specifically deemed the head of the department, the State Department of Education has as its head, under express provisions of the law, the State Board of Education.[40]

a. The State Board of Education

The State Board of Education consists of the chairman of the Board of Higher Education or his designee who shall be a citizen member of the Board of Higher Education and the Chancellor of Higher Education, who is an ex officio member without vote, and 12 additional members who are citizens of the state, having resided here for not less than five years immediately preceding their appointment, not less than three of whom are women, and not more than one of whom is appointed from among the residents of any one county.[41] Members of the state board are appointed by the governor with the advice and consent of the senate for overlapping terms of six years, and they serve without compensation.[42]

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[36] N.J.S.A. 18A:3-20, 21.

[37] N.J.S.A. 18A:4-10; N.J.S.A. 18A:4-1.

[38] N.J.S.A. 18A:4-1; N.J.S.A. 18A:73-1.

[39] N.J. Const. 1947, art. 5, sec. 4, par. 2.

[40] N.J.S.A. 18A:4-1.

[41] N.J.S.A. 18A:4-3.

[42] N.J.S.A. 18A:4-4, 5, 6.

The state board must meet publicly at least once each month at such time and in such places within the state as it may prescribe, and none of its meetings may commence later than 8:00 p.m.[43] The state board organizes at its first regular meeting following June 30 of each year by the election of a president and a vice president from its own members who serve for one year and until their respective successors are elected and qualified.[44] The Commissioner of Education serves as the secretary of the state board.[45]

The state board is required to formulate plans and make recommendations for the unified, continuous and efficient development of public education, other than higher education, of people of all ages within the state.[46] To accomplish this, the state board is given the power to make and enforce, alter and repeal rules for its own governance and for implementing and carrying out the school laws of this state.[47]

The state board's rule-making authority is subject to the provisions of the Administrative Procedure Act.[48] Before a rule is adopted, the state board must provide at least 20 days notice of its intended action. Such notice must be published in the New Jersey Register and must also be mailed to all persons who have made timely request of the state board for advance notice of its rule-making proceedings. The state board must then provide a hearing at which interested persons may present their views on the proposed rule. Interested persons must also be afforded an opportunity to submit data, views or arguments in writing to the state board. The only exceptions to the above-mentioned notice and hearing requirements occur when (1) the state board adopts rules prescribing its internal organization and procedures, or (2) the state board determines that an imminent peril to the public health, safety, or welfare requires immediate adoption of a rule.[49]

The state board is also given such incidental powers as may be needed to perform its duties.[50] The state board by its presiding officer and each of its committees by its chairmen, have the power to administer oaths and examine witnesses under oath in any part of the state in regard to any matter pertaining to schools.[51] It has the power to compel by order the production at such times and places within the state as it designates any and all books, papers and vouchers relating to the schools and the receipt or disbursement of school moneys.[52] It may also compel the attendance of any person in the employ of a board of education and suspend from office any person refusing to attend or to submit such written material.[53] In addition to the foregoing, the state board has complete subpeona power.[54]

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[43] N.J.S.A. 18A:4-7

[44] N.J.S.A. 18A:4-8.

[45] N.J.S.A. 18A:4-9.

[46] N.J.S.A. 18A:4-10.

[47] N.J.S.A. 18A:4-15.

[48] N.J.S.A. 52:14B-1 *et seq.*

[49] N.J.S.A. 52:14B-4.

Among its more express statutory mandates, the state board is required to prescribe a uniform system of bookkeeping for use in all school districts and to compel the maintenance and use of same.[55] Furthermore, the state board is required to report annually to the Legislature in regard to all matters committed to its care.[56]

b. The Commissioner of Education

The Commissioner of Education is appointed by the governor, without regard to residence within or without the state of New Jersey with the advice and consent of the senate, for a term of five years commencing July 1, and he serves after the expiration of his term until his successor is appointed and qualified.[57] Any vacancy in the office of commissioner is filled for the unexpired term, and his annual salary is fixed by law and paid as any other state salary.[58]

The commissioner is designated by law to be the chief executive and administrative officer of the department of education, having general charge and supervision of the work of the department.[59] He is the official agent of the state board for all purposes, and the budget request officer and the approval officer of the department, with power to delegate the duties of these offices as may be required by law.[60] The commissioner is given the general supervision of all schools of the state which receive support or aid from state appropriations, excluding institutions of higher education.[61] He is required to enforce all rules prescribed by the state board.[62]

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[50] N.J.S.A. 18A:4-16.
[51] N.J.S.A. 18A:4-17.
[52] N.J.S.A. 18A:4-18.
[53] N.J.S.A. 18A:4-18.
[54] N.J.S.A. 18A:4-19.
[55] N.J.S.A. 18A:4-14.
[56] N.J.S.A. 18A:4-20.
[57] N.J.S.A. 18A:4-21.
[58] N.J.S.A. 18A:4-21.
[59] N.J.S.A. 18A:4-22.

The commissioner must, pursuant to rules and regulations of the state board, inquire into and ascertain the thoroughness and efficiency of operation of any of the schools of the public system of the state and of any grades therein by such means as seem proper to him.[63] He is further required to report to the state board the results of such inquiries and such other information with regard thereto as the state board may require or as he deems proper.[64] The statutes expressly say that the commissioner may, with the approval of the state board, prescribe minimum courses of study for the public schools and require boards of education to submit to him for approval or disapproval courses of study adopted by them, whenever he deems it advisable to do so.[65]

The commissioner may prepare, publish and distribute from time to time handbooks, materials and circulars for the guidance of teachers in the public schools. The commissioner is required to compile and publish for general distribution an annual report of comparative financial statistics of all school districts showing the capital and current costs, the cost of principal services, the amount of debt and other pertinent data for each school district.[66]

Under recent law, the commissioner must recommend and each school district must incorporate a drug education program into its secondary school health education curriculum.[67] The commissioner must evaluate the effectiveness of the drug education program, and he may make grants to local school districts proposing innovative drug education programs aimed at elementary and secondary school students and at the general public.[68]

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60. N.J.S.A. 18A:4-22.
61. N.J.S.A. 18A:4-23.
62. N.J.S.A. 18A:4-23.
63. N.J.S.A 18A:4-24.
64. N.J.S.A. 18A:4-24.
65. N.J.S.A. 18A:4-25.
66. N.J.S.A. 18A:4-28. 30.
67. N.J.S.A. 18A:4-28.7.
68. N.J.S.A. 18A:4-28.9. 28.11. 28.12.

The commissioner has six assistant commissioners, appointed by him, each of whom performs certain assigned duties such as: (a) the supervision of curriculum and instruction; (b) the supervision of vocational education; (c) the hearing of controversies and disputes under the school laws; and (d) the supervision of business and financial matters.[69] Directors, inspectors, assistants, clerks and other employees may be appointed and assigned duties by the commissioner as he deems necessary to carry out the functions of the department.[70]

The commissioner is required to report to the state board once each month and annually at its December meeting as to the operation and condition of the schools of the public school system and all educational institutions other than institutions of higher education which receive support or aid from state appropriations. His report must include appropriate statistical tables and such suggestions and recommendations for the improvement of the schools and the advancement of public education within the state as the commissioner deems expedient and of interest to the people of the state, especially those concerned with the operation of the public schools.[71]

c. The County Superintendent of Schools

In each county there is a county superintendent of schools, appointed by the commissioner with the approval of the state board, for a term of three years.[72] The county superintendent must have been a resident of the state for at least three years immediately preceding his appointment, and must hold an appropriate certificate.[73] His salary is paid from state funds.[74] The commissioner may designate any one of his assistant commissioners or, with the approval of the state board, another suitable person to exercise the powers and perform the duties of the county superintendent during any period when the county superintendent is unable to perform his duties by reason of illness, physical disability, or for any other cause, and during any period when the office of the county superintendent is vacant by reason of death or resignation of the incumbent or for any other cause.[75] The commissioner can withhold the payment of salary to any county superintendent who fails to perform faithfully all the duties imposed upon him by law.[76]

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[69] N.J.S.A. 18A:4-32, 34.

[70] N.J.S.A. 18A:4-35, 38.

[71] N.J.S.A. 18A:4-40.

[72] N.J.S.A. 18A:7-1.

[73] N.J.S.A. 18A:7-1.

[74] N.J.S.A. 18A:7-3.

Each county superintendent is required to devote his entire time to the duties of his office, and he has the general supervision of all the public schools of the district of a county, except those city school districts in which there has been appointed a full-time superintendent of schools.[77] The county superintendent maintains an office at the county seat, which is open to the public as are other county offices, and which is supplied to him by the board of chosen freeholders of the county.[78] The school records of the county for the use of the county and state departments of education, the United States Office of Education and the United States Commissioner of Education, are kept in the county office.[79]

Each county superintendent is required to: (a) examine all the schools under his general supervision by visitation; (b) keep informed with respect to the management, methods of instruction and discipline, course of study and textbooks in use, the condition of school libraries and of the real and personal property of the school districts with particular attention to the construction, heating, ventilation, and lighting of school buildings; (c) advise and counsel boards of education of local school districts under his general supervision with respect to the performance of their duties; (d) report to the commissioner annually and as otherwise required; and (e) perform such other duties as are specifically prescribed by law.[80]

Helping teachers, whose duty it is to aid and direct teachers in the schools of the county, may be appointed by the commissioner whenever he deems advisable.[81] The helping teachers are part of the staff of the county superintendent, and work out of his office, and their salaries are paid from state funds.[82]

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[75] N.J.S.A. 18A:7-2.

[76] N.J.S.A. 18A:7-4.

[77] N.J.S.A. 18A:7-5.

[78] N.J.S.A. 18A:7-6.

[79] N.J.S.A. 18A:7-6.

[80] N.J.S.A. 18A:7-8.

[81] N.J.S.A. 18A:4-36.

A child study supervisor and the personnel for a child study team may be appointed by the commissioner whenever a survey of the handicapped children in a county indicates a need. Such employees serve under the direction and as part of the staff of the county superintendent, and their compensation is paid by the state.[83]

4. Education Coordinating Council

When the educational function of the state was divided into two separate departments, it became clear that a certain amount of mutual planning and cooperation would become necessary. Although the Chancellor of Higher Education and the Commissioner of Education serve as members of the opposite boards, the Legislature deemed it advisable to create a New Jersey Education Coordinating Council. The council is an interdepartmental agency designed to facilitate the coordination of the educational policies and programs of the state in all fields of public education.[84] The council consists of six members: the president of the State Board of Education, the chairman of the Board of Higher Education, the Commissioner of Education, the Chancellor of Higher Education, and one citizen member of the State Board of Education and one citizen member of the Board of Higher Education, each selected by the state boards for terms of one year commencing July 1 and until the selection of their successors. Members of the council serve without compensation.[85] The council meets at the call of the governor with at least four regular meetings each year.[86] Its duties and responsibilities include reviewing and recommending programs and priorities to best meet the total educational needs of the state, and reviewing the budgets of the departments of education and higher education and making fiscal recommendations to the State Board of Education and the Board of Higher Education.[87]

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[82] N.J.S.A. 18A:4-36, 37.
[83] N.J.S.A. 18A:46-3,4.
[84] N.J.S.A. 18A:5-1.
[85] N.J.S.A. 18A:5-2.
[86] N.J.S.A. 18A:5-3.
[87] N.J.S.A. 18A:5-4.

5. Interstate Compact for Education

The state of New Jersey has, by treaty duly enacted into law, entered into a compact with other states.[88] Its purpose is to establish and maintain close cooperation among executive, legislative, professional, educational, and lay leadership on a nationwide basis but at the state and local levels in the field of education. It seeks to provide a forum for the discussion, development, and recommendation of public policy alternatives in the field of education, and to provide a clearinghouse of information on matters relating to current educational problems.

As a vehicle to carry out these goals, the interstate compact has established the Education Commission of the States, whose task it is to develop the research data and proposals on educational problems, particularly in the area of adequate financing of education, and to arrange for such meetings or publications as may facilitate the dissemination of its work. New Jersey is represented on the Education Commission of the States by the governor, four citizens appointed by the governor, one state senator named by the president of the senate and one assemblyman named by the speaker of the general assembly.[89]

6. New Jersey School Boards Association

In order to guarantee that local school boards would have a voice at the state level, the Legislature has established an independent public corporation known as the New Jersey School Boards Association. All boards of education of the various school districts in the state are members of the association.[90] The association is empowered to investigate such subjects relating to education and its various branches as it may think proper, and to encourage and aid all movements for the improvement of the educational affairs of the state.[91] The powers of the state association to express its opinion and to intervene in public policy matters are broad.[92]

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[88] N.J.S.A. 18A:75-1 *et seq.*

[89] N.J.S.A. 18A:75-11.

[90] N.J.S.A. 18A:6-45.

[91] N.J.S.A. 18A:6-47.

[92] See **N.J. State AFL-CIO v. State Federation of District Boards of Education**, 93 N.J. Super. 31 (Ch. Div. 1967).

The power of government of the state association resides in representatives selected from each local board of education, and the expenses of the association are paid for by dues which local boards assess of themselves.[93]

7. Local Educational Institutions

In addition to the institutions described in the foregoing sections, the Legislature has created a large number of local administrative units for various purposes, with a variety of formats for institutional governance, funding, and powers. These include local school districts, consolidated school districts, regional school districts, county vocational school districts, and county special services school districts among others. An analysis of the general rules of law governing these districts, as well as a description of each of their legal structures, fills the subsequent chapters of this book.

Two institutions which are often overlooked in any account of local educational agencies are the county audio-visual aids center and the county educational services commissions.

The Legislature has authorized the boards of education of two or more school districts in any county to establish a county educational audio-visual aids center.[94] Such a center is governed by a commission consisting of three board of education members, three professional educators and a public librarian.[95] The commission is empowered to maintain and furnish educational audio-visual aids to the public schools of the participating school districts.[96] County audio-visual aids centers are funded by local participating school boards proportionately on the basis of pupil enrollment.[97]

The Legislature has also created the possibility for broader local cooperative enterprises by sanctioning the establishment of county educational services commissions. Any two or more local boards may with the approval of the commissioner petition the State Board of Education to establish such a commission.[98] The commission, governed by a board of directors consisting of local board members and the county superintendent of schools, is a separate corporate entity.[99] The commission has broad powers to hire personnel including certificated professionals,[100] to apply for and receive private and public grants-in-aid,[101] to enter service contracts with member school districts for terms of up to 10 years,[102] and to expand its membership and its purposes.[103]

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[93] N.J.S.A. 18A:6-50.

[94] N.J.S.A. 18A:51-1.

[95] N.J.S.A. 18A:51-2.

[96] N.J.S.A. 18A:51-6.

[97] N.J.S.A. 18A:51-7.

[98] N.J.S.A. 18A:6-52.

The avowed legislative purpose of such commissions is to carry on programs of educational research and development and to provide public school districts such educational and administrative services as may be authorized by rules of the State Board of Education.

C. The Administration of the School Laws

Any body of laws as complex as those which govern the public schools requires a system of review to insure their even application and effective implementation. The Legislature has responded with a system which places quasi-judicial power in local hands and favors in the first instance the local resolution of disputes. That system also provides for several levels of intermediate quasi-judicial administrative review before a dispute proceeds into the courts, thereby assuring a uniform application of the school laws statewide.

1. The Role of the Local Board

The local board of education is the prime enforcer of the school laws. Its obligation in this respect is unambiguous, arising under a legislative mandate that it enforce the rules of the state board and perform all acts consistent with law for the conduct, equipment and maintenance of the public schools.[104] Local boards have quasi-judicial powers. Any member of a local board may administer oaths to witnesses in any hearing in which the local board has jurisdiction.[105]

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[99] N.J.S.A. 18A:6-54, 55, 61.

[100] N.J.S.A. 18A:6-60, 65.

[101] N.J.S.A. 18A:6-67.

[102] N.J.S.A. 18A:6-63.

[103] N.J.S.A. 18A:6-69, 70.

[104] N.J.S.A. 18A:11-1(b), (d).

[105] N.J.S.A. 18A:6-19.

The president of any local board of education may issue a subpoena at the request of any party to such a hearing, to compel the presence of witnesses or the production of documents.[106] The president or the board as a whole may apply to the courts for relief against recalcitrant witnesses.[107] Parties are guaranteed the right to be represented by counsel, to testify and produce witnesses on their behalf, and to cross-examine witnesses against them.[108]

Although the jurisdiction of local boards is not precisely listed and there may be some question as to the proper role of a local board in certain disputes,[109] the board itself will largely determine the extent of its jurisdiction, and in some cases such as student expulsion, the exercise of quasi-judicial power is clearly called for.[110]

The local board's judgment on educational disputes is the first in time and largest by volume, since the vast majority of disputes are resolved locally. The Legislature has provided a series of subsequent steps which a dissatisfied party to a school law dispute may take as a matter of right.

2. Appeals to the Commissioner, the State Board and the Courts

The Commissioner of Education has the next jurisdiction to hear controversies and disputes which are not resolved locally, and this jurisdiction covers all disputes under the school laws except those governing higher education.[111] It includes disputes under the rules of the commissioner and the State Board of Education.[112] With the exception of charges against tenured employees and school election disputes, proceedings before the commissioner are initiated by the filing of a petition setting forth the basis of the dispute and the relief requested.[113]

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[106] N.J.S.A. 18A:6-20.

[107] N.J.S.A. 18A:6-21 *et seq.*

[108] N.J.S.A. 18A:6-20.

[109] **Cf. Hoek v. Board of Education of Asbury Park,** 75 N.J. Super. 182 (App. Div. 1962), application for rehearing denied 76 N.J. Super. 448 (App. Div. 1962); **In re Fulcomer,** 93 N.J. Super. 404 (App. Div. 1967).

[110] N.J.S.A. 18A:11-1(c); N.J.S.A. 18A:6-26; **Tibbs v. Board of Education of Franklin Township, Somerset County,** 114 N.J. Super. 287 (App. Div. 1971), aff'd 59 N.J. 506 (1971); cf. **Fitzpatrick v. Board of Education of Borough of Montvale,** 69 S.L.D. 4 at 7.

[111] N.J.S.A. 18A:6-9.

[112] **Id.**

[113] N.J.A.C. 6:24-5.1; N.J.A.C. 6:24-6.1; N.J.A.C. 6:24-1.1 *et seq.*

The commissioner's function in reviewing local decisions has been the subject of much litigation and conflict. The well-settled rule is that the commissioner must exercise his quasi-judicial powers in three ways.[114] First, he must determine whether a disputed local decision conforms with the law. Secondly, he must decide whether the evidence available is sufficient to sustain the factual conclusions which were reached locally, and if not, to find new conclusions of fact. Thirdly, he must determine on such issues that entailed the use of local "discretion" whether that discretion was applied in an arbitrary, capricious or unreasonable manner. The "comprehensive" nature of the commissioner's quasi-judicial function has existed in our statutes since 1851, and has never been withdrawn or narrowed.[115] The commissioner himself has repeatedly been chastised for seeking to limit his own powers.[116]

Nonetheless, controversy over the commissioner's use of these powers is likely to continue since the three functions outlined above differ vastly. The first two functions require the exercise of the commissioner's independent judgment in deciding questions of law and resolving questions of fact.[117] To some, this substitution of the state's judgment for local judgment seems violative of the traditions of home rule, particularly when applied on budgetary decisions, even though the amount of money needed to maintain a "thorough and efficient" educational system is clearly a matter of state constitutional law rather than of pure local discretion. On the other hand, the third function, review for unreasonableness, entails a standard which is completely respectful of local decisions,[118] and is the only issue for the commissioner's review where the facts are not disputed, and where there is no allegation that the local rule or decision violates some law.[119]

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[114] **Kopera v. West Orange Board of Education,** 60 N.J. Super. 288 (App. Div. 1960); **Fanwood v. Rocco,** 59 N.J. Super. 306 (App. Div. 1960), aff'd 33 N.J. 404 (1960).

[115] **Board of Education of East Brunswick v. Township Council of East Brunswick,** 48 N.J. 94, 101 (1966).

[116] **In re Masiello,** 25 N.J. 590 (1958) where the Supreme Court said at 607: "Such self-imposed limitation does not appear to be proper upon a study of the broad statutory authority granted to him." **See also Jenkins, supra,** 58 N.J. at 503.

[117] **In re Masiello, supra,** 25 N.J. at 607.

[118] **Kopera, supra,** 60 N.J. Super. at 297; **Boult v. Bd. of Ed. of Passaic,** 39-49 S.L.D. 7, aff'd by State Board 39-49 S.L.D. 15, 135 N.J.L. 329 (Sup. Ct. 1947), 136 N.J.L. 521 (E. & A. 1948).

Any party aggrieved by any determination of the commissioner may appeal from his determination to the State Board of Education.[120] Such an appeal must be taken within 30 days after the decision appealed from is filed.[121] Rules of the state board set forth the procedures for perfecting an appeal.[122] Under law, a committee of the board may hear the appeal and report its conclusions to the full board which decides the case by resolution at a public meeting.[123] While theoretically the state board will not reverse the commissioner unless it is persuaded that he abused his discretion,[124] it is clear that the board will made a *de novo* review of the record and an independent decision when it chooses to do so.[125]

Finally, it must be noted that any party dissatisfied with the results of this extensive administrative review is guaranteed the opportunity to have at least one appellate court consider its claim. Appeals from decisions of the State Board of Education may be taken to the Appellate Division of Superior Court.[126] The Appellate Division sits in panels of three judges each. It is at this level that the results are least predictable, since the nature of the issues to be considered largely determines the willingness of the appellate court to override the expertise of the administrative decision-maker. "Our obeisance to that expertise and experience is not equally deep in all cases," one court has said. "It depends upon the issues of each case. If the case is one which he (i.e. the administrative agency) is plainly better equipped than we are to decide, because of his expertness, knowledge and experience, we naturally defer. . . . In some cases that deference would be almost to the point of considering his judgment conclusive. . . . On the other hand, where the issues are such that we can evaluate them as well as he, we do not defer to his expertness to the same degree."[127]

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[119] See e.g., **Concerned Parents v. Board of Education of Howell Township**, 1972 S.L.D. 600.

[120] N.J.S.A. 18A:6-27.

[121] N.J.S.A. 18A:6-28; N.J.A.C. 6:2-1.1.

[122] N.J.A.C. 6:2-1.3.

[123] N.J.S.A. 18A:6-29.

[124] **Byers v. Board of Education of Bridgeton**, 67 S.L.D. 341, 342.

[125] **Pelletreau v. Board of Education of New Milford**, 67 S.L.D. 45; **Meyer v. Board of Education of Sayreville**, 70 S.L.D. 188, 192, decision on remand 1971 S.L.D. 140, rev'd by State Board 1972 S.L.D. 673.

[126] Rules Governing the Courts of the State of New Jersey, 2:2-3.

A party aggrieved by a decision of the Appellate Division has only a limited right of appeal to the New Jersey Supreme Court. In cases involving a substantial constitutional issue and in cases where there has been a dissent in the Appellate Division, the State Supreme Court must hear the appeals.[128] In other cases, a final judgment of the Appellate Division may be appealed only if the State Supreme Court grants "certification" of the action.[129] The Supreme Court will generally grant certification "only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the interest of justice requires."[130]

Following any State Supreme Court action (including a denial of certification), there is an extremely limited right of appeal to the United States Supreme Court. Such appeals are limited to cases involving federal constitutional and federal statutory issues. Furthermore, the United States Supreme Court often has the discretion to refuse to hear such cases.[131]

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[127] **Fanwood v. Rocco, supra,** 59 N.J. Super. at 319; **Biancardi v. Waldwick Bd. of Education,** 139 N.J. Super. 175 (App. Div. 1976).

[128] N.J. Const., art. 6, sec. 5, par. 1.

[129] **Id.**

[130] Rules Governing the Courts of the State of New Jersey, 2:12-4.

[131] 28 U.S.C.A. §1257.

Chapter II

The Legal Structure of Local School Districts

School districts in New Jersey are legally classified as Type I or Type II districts.[1] This system of classification provides a skeletal framework for school district organization, but it has been frequently criticized as being overly complex and inefficient.[2]

A. Type I School Districts

Type I school districts include every district established in a city, or in a municipality other than a city which becomes a city.[3] As of June 1, 1972 there were 52 Type I districts in the state.

In Type I districts, the board of education consists of five, seven or nine members[4] who are appointed to three year terms by the mayor or other chief executive officer of the municipality which constitutes the district.[5] If a vacancy occurs in the membership of the board, it is the duty of the board secretary to report it immediately to the mayor or other chief executive officer who then has 30 days in which to appoint a qualified person to fill the vacancy for the unexpired term.[6]

School appropriations in a Type I district are set by a board of school estimate.[7]

B. Type II School Districts

Type II school districts include all districts established in municipalities other than cities, all districts established

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1. N.J.S.A. 18A:9-1.
2. See the Report of the State Committee to Study the Next Steps of Regionalization and Consolidation in the School Districts of New Jersey, April 1969.
3. N.J.S.A. 18A:9-2. It should be noted that in New Jersey school districts have the same boundaries as cities, boroughs, villages, towns and townships, either singly or in combination.
4. N.J.S.A. 18A:12-6.
5. N.J.S.A. 18A:12-7.
6. N.J.S.A. 18A:12-7.
7. N.J.S.A. 18A:22-1.

in cities which become municipalities other than cities, and all regional school districts.[8] As of June 1, 1972, there were 457 Type II districts consisting of one municipality, eight consisting of two or more municipalities, and 65 regional school districts. These Type II school districts have either elected or appointed boards of education.

1. Type II Elected Districts

In Type II districts having elected boards of education, the board consists of nine members unless pursuant to law the number has been reduced to three, five or seven members.[9] Board members are elected at annual school elections for terms of three years.[10] Vacancies in board memberships are filled by the county superintendent, if the vacancy is caused by: (1) the absence of candidates for election to the school board; (2) removal of a member because of lack of qualifications; (3) a failure to fill a vacancy within 65 days of its occurrence. The county superintendent may also fill vacancies to a number sufficient to make up a quorum if by reason of vacancies a quorum is lacking.

If in the annual school election, two or more candidates qualified for board membership receive an equal number of votes, the vacancy is filled by a special election restricted to such candidates and held within 60 days of the annual school election. The special election is held only after a recount and certification of the annual election result by the commissioner. If in this special election, two or more qualified candidates receive an equal number of votes, the vacancy is filled by the county superintendent.

If there is a failure to elect at the annual election due to improper election procedures, the vacancy is filled by special election held within 60 days of the annual election and restricted to those persons who were candidates at the annual election.

If there is a failure to elect at the annual election due to improper campaign practices, the vacancy is filled by the commissioner.

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[8] N.J.S.A. 18A:9-3.

[9] N.J.S.A. 18A:12-11.

[10] N.J.S.A. 18A:12-11.

In all other cases vacancies are filled by the board itself.[11]

In Type II elected districts the board of education fixes and determines the amount of money in its budget,[12] and the budget is submitted for approval by the voters at the annual school election.[13]

2. Type II Appointed Districts

Any Type II district in a town having a population of more than 10,000 in which the members of the board of education were appointed by the mayor or other chief executive officer as of January 11, 1968, the date Title 18A became effective, continues to have an appointed board of education after that date, unless the voters in the district by referendum have determined that the members of the board of education shall be elected.[14] In Type II districts having appointed boards of education, board members are appointed by the mayor or other chief executive officer of the municipality for five year terms.[15] Vacancies in the membership of the board must be reported immediately by the board secretary to the mayor or other chief executive officer of the municipality who then has 30 days to appoint a qualified person to fill the vacancy for the unexpired term.[16]

C. Change of Classification

School districts may change their classification from Type I to Type II or from Type II to Type I. The question of reclassification must be submitted to the voters of the district whenever the governing body of a municipality of the district or the board of education of the district by resolution so directs, or whenever a petition, signed by the requisite number of voters has been filed with the clerk of a municipality.[17]

Whenever such a resolution has been passed, or such a petition has been filed in a Type I district, the municipal clerk has the question submitted at the next municipal or general election held in the municipality following the expiration of 35 days from the date of adoption of the resolution or filing of the petition.[18]

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[11] N.J.S.A. 18A:12-15.

[12] N.J.S.A. 18A:22-32.

[13] N.J.S.A. 18A:22-33.

[14] N.J.S.A. 18A:12-16.

[15] N.J.S.A. 18A;12-7.

[16] N.J.S.A. 18A:12-7.

[17] N.J.S.A. 18A:9-4.

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In a Type II district, the question is submitted to the voters at the next annual school election which is held at least 15 days after the adoption of the resolution or the filing of the petition, unless in the petition it is requested that the question be submitted at a special school election. If a request for a special school election has been made, the board of education must call such special election to be held not more than 50 days after the filing of the petition.[19]

If the voters of a Type I district decide that the district will become a Type II district, the district will immediately thereafter be governed by those laws relating to Type II districts. Board of education members at the time of the election can continue in office until the expiration of their respective terms, and the qualification in office of their respective successors.[20]

If the voters of a Type II district decide that the district will become a Type I district, the district will be governed by those laws relating to Type I districts after the following January 31, unless the district is one established in a city of the first class. In that case, the district will be governed as a Type I district after the following June 30.[21]

If the board of education of any district becoming a Type II district is less than nine, it must be increased to nine at the next annual school election, or at a special school election in certain cases.[22] The terms of the additional members to be elected must be arranged by the members of the board holding over so that as soon as possible the term of each member of the board shall be three years, and the term of three members shall expire in each year.[23]

D. Regional School Districts

New Jersey law allows two or more school districts to unite to provide educational services as a regional school district. Regional districts are governed by the same provisions as are Type II school districts unless otherwise provided by law.[24]

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[18] N.J.S.A. 18A:9-5.

[19] N.J.S.A. 18A:9-6.

[20] N.J.S.A. 18A:9-9.

[21] N.J.S.A. 18A:9-8.

[22] N.J.S.A. 18A:9-10.

[23] N.J.S.A. 18A:9-11.

Regional school districts are of two types: (a) "all-purpose regional districts" organized to run all the schools of the municipalities included in such regional district; and (b) "limited purpose regional districts" organized to provide and operate in the territory comprised within such districts one or more of the following: elementary schools, junior high schools, high schools, vocational schools, special schools, health facilities or particular educational services or facilities.[25]

Regional school districts are under the supervision of the county superintendent of the county in which the constituent districts having the greatest amount of ratables are situated.[26] The board of education of a regional district consists of nine members, unless there are more than nine constituent districts, in which case the board may have between nine and fifteen members apportioned among the constituent districts by a complex statutory formula which involves the grouping of constituent districts into representative districts and the distribution of seats among the representative districts by the method of equal proportions.[27] If there are nine or less constituent districts, the members of the board of education are apportioned by the county superintendent among the districts as nearly as may be according to the number of their inhabitants, except that each district must have at least one member.[28] Vacancies in board membership are filled from the constituent district in the same manner as vacancies in the membership districts are filled.[29] The first board of education of a newly created regional district is appointed by the county superintendent,[30] but thereafter, board members are elected for three year terms at annual school elections.[31]

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[24] N.J.S.A. 18A:13-1.

[25] N.J.S.A. 18A:13-2.

[26] N.J.S.A. 18A:13-4.

[27] N.J.S.A. 18A:13-8; In **Franklin Twp. v. Bd. of Ed. of No. Hunterdon Reg. High School,** 74 N.J. 345 (1977), the New Jersey Supreme Court held this apportionment formula unconstitutional as applied to the North Hunterdon Regional District in that the Court found insufficient justification for the greater than 10% deviation from strict voter equality. The New Jersey Legislature was directed to revise the apportionment statute as it pertains to regional districts with more than nine constituent districts in order to meet the constitutional requirements outlined by the Court in the **North Hunterdon** case. As this volume goes to publication, the **North Hunterdon** case is being appealed to the United States Supreme Court; if that Court upholds the decision based upon the percentage deviation rationale, the case may have far reaching implications for the large number of regional districts which have a range of deviation in population among representative districts which is greater than ten per cent.

[28] N.J.S.A. 18A:13-8.

No regional school district may be created or enlarged unless the voters in each district in the existing or proposed regional district approve the regionalization at a special election.[32] However, the New Jersey Supreme Court has held that the Commissioner of Education has the power to cross district lines and to effectuate a merger of school districts to avoid "segregation in fact", at least where there are no impracticalities and the concern is not with multiple communities but with a single community without visible or factually significant internal boundary separations.[33]

School appropriations in a regional district are fixed by the board of education and submitted to the voters at each annual school election.[34]

E. County Vocational Schools

New Jersey's education laws contain special provisions for the maintenance of vocational education at the county level. Vocational education means any education whose purpose is: (a) to fit for profitable employment; (b) to provide training which is supplemental to daily employment; or (c) to fit for homemaking.[35]

A county vocational school may be established in one of three ways: (1) if the State Board of Education adopts a resolution that a need for a vocational school exists in a county and the board of chosen freeholders of that county by a majority vote favors the establishment of such school;[36] (2) if at least 15 percent of the registered voters of a county of fewer than 100,000 population petition for a referendum on the question and the result of the referendum favors the establishment of a county vocational school;[37] (3) if the board of chosen freeholders in a second class county determines by a majority vote to establish a county vocational school.[38]

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[29] N.J.S.A. 18A:13-11.

[30] N.J.S.A. 18A:13-37.

[31] N.J.S.A. 18A:13-10.

[32] N.J.S.A. 18A:13-34 *et seq.*

[33] **Jenkins v. Morris Twp. Bd. of Ed.**, 58 N.J. 483 (1971).

[34] N.J.S.A. 18A:13-17.

[35] N.J.S.A. 18A:54-1.

[36] N.J.S.A. 18A:54-12.

The board of education of the county vocational school system consists of five members, one of whom must be the county superintendent of schools.[39] In counties of the first class having the office of county supervisor, the four appointed members of the board are appointed by the county supervisor. In all other counties of the first class, in all counties of the second class and in counties of the third and fifth classes having populations in excess of 120,000 the four appointed members of the board are appointed by the director of the board of chosen freeholders, with the advice and consent of that board. In other counties, the four appointive members of the board are appointed by the judge of the county court or in counties where there is more than one judge, by a majority of them.[40]

School appropriations for county vocational schools are fixed and determined by a board of school estimate.[41]

F. County Special Services Districts

The board of chosen freeholders of any county may establish a county special services school district for the education and treatment of handicapped children upon its findings that the need for such a special services school district exists.[42] If such a special district is established, first priority is given to courses of study not at the time available in any other school within the county, especially for those with unusually severe disabilities.[43] Once a special services school district has been established, all eligible pupils within the county must be accepted so far as the facilities permit. Children residing outside the county may be accepted if the facilities are available, but only after provision has been made for all eligible children within the county.[44]

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[37] N.J.S.A. 18A:54-13.

[38] N.J.S.A. 18A:54-14.

[39] N.J.S.A. 18A:54-16.

[40] N.J.S.A. 18A:54-16.

[41] N.J.S.A. 18A:54-27.

[42] N.J.S.A. 18A:46-29.

[43] N.J.S.A. 18A:46-33.

The board of education for each county special services school district consists of a superintendent of schools, ex officio, and six other persons who are appointed by the director of the board of chosen freeholders with the advice and consent of that board.[45] School appropriations in a special services district are fixed and determined by a specially appointed board of school estimate.[46]

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[44] N.J.S.A. 18A:46-31.

[45] N.J.S.A. 18A:46-35.

[46] N.J.S.A. 18A:46-39.

Chapter III

The Local Board of Education

A. Authority and Powers of the Board

The schools of each school district are governed through the supervision and control of a local board of education.[1] Since boards of education are created by statute to perform a state function at a local level, their powers are derived from the Legislature, and not from the people of the school district. Boards of education can perform only those acts for which express or implied authority exists in law or in the rules and regulations of the State Board of Education.

Every local board of education is required, as part of its mandatory powers and duties, to: (a) adopt an official seal; (b) enforce the rules of the State Board of Education; (c) make, amend and repeal rules for its own government, the transaction of business, the government and management of the public schools and public school property in the district, and for the employment, regulation of conduct and discharge of employees; (d) perform all acts and do all things, consistent with law and state board rules, necessary for the proper conduct, equipment and maintenance of the public schools.[2]

As legal entities, boards of education have been given by the Legislature the power to sue or be sued in the corporate name.[3] Where a suit is brought against an individual board member, the board may be responsible for the legal costs and other financial loss of the member.[4] (See Section B, Members of the Board).

As part of its permissive powers, a board of education may:

(a) cause an exact census to be made annually of all of the school age children in the district and may employ appropriate personnel for the purposes;[5]

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[1] N.J.S.A. 18A:10-1.

[2] N.J.S.A. 18A:11-1.

[3] N.J.S.A. 18A:11-2.

[4] N.J.S.A. 18A:12-20.

(b) accept and hold in trust real or personal property for the purpose of awarding scholarship grants for higher education in colleges, universities and graduate schools;[6]

(c) join with one or more boards of education to establish a jointure commission to educate physically handicapped and mentally retarded children;[7]

(d) join with one or more boards in any county to establish a "county educational audio-visual aid center";[8]

(e) participate in the organization, operation and maintenance of a non-commercial, non-profit, education television station, and may contract for services, not to exceed for any one year more than $2.00 per pupil in resident enrollment;[9]

(f) establish a nursery school or a nursery department in any school under its control, and admit to such nursery school or department any child who is under the age at which children are admitted to other schools or classes in the district;[10]

(g) establish and maintain a special school of instruction for the purpose of restraining, instructing, and caring for dependent and delinquent children under 16 years of age, committed to the school by any juvenile and domestic relations court or any court having jurisdiction over juvenile offenders;[11]

(h) establish and maintain public evening schools for the instruction of persons over 12 years of age who are residents of the district;[12]

(i) establish and maintain a public evening school or evening schools for the instruction of foreign born residents of the district over 14 years of age, in the English language and in the form of government and the laws of New Jersey and of the United States;[13]

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[5] N.J.S.A. 18A:11-2.
[6] N.J.S.A. 18A:71-27.
[7] N.J.S.A. 18A:46-25.
[8] N.J.S.A. 18A:51-1.
[9] N.J.S.A. 18A:51-13.
[10] N.J.S.A. 18A:44-1.
[11] N.J.S.A. 18A:47-1.
[12] N.J.S.A. 18A:48-1.

(j) maintain a program of adult education and utilize buildings, equipment and other school facilities of the district for such purpose;[14]

(k) if located in a municipality containing a population of over 10,000 provide for the employment of lecturers on the natural sciences and kindred subjects in the public schools in any such municipality, in the evenings, for the benefit of working men and working women;[15]

(l) provide by contract and appropriate funds for the support and maintenance of existing museum facilities and services for the educational or recreational use and benefit of pupils in the public schools;[16]

(m) establish and maintain vocational schools;[17]

(n) enter into contracts for vocational education courses with a state approved private vocational school when such courses cannot be provided by public vocational schools or other school districts or when the private vocational school can provide substantially equivalent training at a lesser cost. Boards must secure the written approval of the commissioner prior to execution of such contracts.[18]

Certain acts of a board of education require a majority vote of all members of the board. Before taking action on a particular matter, the specific section of the laws dealing therewith should be consulted to determine whether a majority vote of all the members is required. The following actions require a majority vote of the full membership of the board:

(a) appointing a teaching staff member;[19]

(b) transferring a teaching staff member;[20]

(c) adopting or altering a course of study;[21]

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[13] N.J.S.A. 18A:49-1.

[14] N.J.S.A. 18A:50-1.

[15] N.J.S.A. 18A:52-1.

[16] N.J.S.A. 18A:53-1.

[17] N.J.S.A. 18A:54-5.

[18] N.J.S.A. 18A:54-10.1 *et seq.*

[19] N.J.S.A. 18A:27-1.

[20] N.J.S.A. 18A:25-1.

[21] N.J.S.A. 18A:33-1.

(d) selecting textbooks;[22]

(e) withholding a prescribed employment or adjustment increment;[23]

(f) determining the sufficiency of charges to dismiss or reduce the salary of a tenured employee;[24]

(g) admitting pupils, who have never attended public or private school, after October 1 following the opening of school for the fall term;[25]

(h) appointing and fixing the term of a superintendent of schools;[26]

(i) appointing or removing an assistant superintendent of schools;[27]

(j) appointing and fixing the term and salary of a board secretary;[28]

(k) appointing and fixing the term and salary of an assistant board secretary;[29]

(l) appointing, fixing the salary and defining the duties of a school business administrator;[30]

(m) appointing or removing and fixing the salary of a business manager in a Type I school district;[31]

(n) restoring or removing an assistant superintendent, principal or teaching staff member, following suspension by the superintendent of schools;[32]

(o) removing from office a president or vice president of a board for failure to perform a duty imposed upon him;[33]

(p) directing the board secretary to make deductions for fees and premiums for hospital service and group insurance plans and for United States government bonds from salaries of participating employees;[34]

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[22] N.J.S.A. 18A:34-1.
[23] N.J.S.A. 18A:29-14.
[24] N.J.S.A. 18A:6-11.
[25] N.J.S.A. 18A:38-6.
[26] N.J.S.A. 18A:17-15.
[27] N.J.S.A. 18A:17-16.
[28] N.J.S.A. 18A:17-5.
[29] N.J.S.A. 18A:17-13.
[30] N.J.S.A. 18A:17-14.1.
[31] N.J.S.A. 18A:17-25.
[32] N.J.S.A. 18A:25-6.
[33] N.J.S.A. 18A:15-2.
[34] N.J.S.A. 18A:16-8.

(q) deciding to use voting machines in annual and special school elections in districts where they are used in general or municipal elections;[35]

(r) exchanging lands owned by the board;[36]

(s) disposing of land owned by the board, or the rights or interests therein;[37]

(t) deciding to establish, with other school districts of the county, a county educational audio-visual aids center;[38]

(u) applying for membership in an already established county educational audio-visual aids center;[39]

(v) fixing and determining the amount of money in the budget to be submitted to the voters in a Type II district;[40]

(w) approving capital projects for submission to voters in a Type II district;[41]

(x) authorizing the issuance of school bonds in a Type II district.[42]

B. Members of the Board

Board of education members must be citizens and residents of their school districts, and must have been such for at least two years immediately preceding their appointment or election to the board. Board members must be able to read and write.[43]

Board members are forbidden by law to receive any compensation for their services on the board,[44] and they are further prohibited from having any direct or indirect interest in any contract with or claim against the board.[45]

Whenever a board member ceases to be a resident of the district, his membership on the board immediately ceases.[46]

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[35] N.J.S.A. 18A:14-39.

[36] N.J.S.A. 18A:20-8.

[37] N.J.S.A. 18A:20-5.

[38] N.J.S.A. 18A:51-1.

[39] N.J.S.A. 18A:51-11.

[40] N.J.S.A. 18A:22-32.

[41] N.J.S.A. 18A:22-39.

[42] N.J.S.A. 18A:24-10.

[43] N.J.S.A. 18A:12-1.

[44] N.J.S.A. 18A:12-4.

[45] N.J.S.A. 18A:12-2.

[46] N.J.S.A. 18A:12-3.

Provision is also made for removal by the board, if it so chooses, of any board member who fails to attend three consecutive meetings of the board without good cause.[47]

Whenever a civil action is brought against a board member for an act or omission arising out of the performance of his official duties, the board of education must pay for the board member's reasonable legal expenses and must protect the board member from any resulting financial loss. The board must also pay reasonable legal fees and other financial losses of a member in a like criminal action if the disposition of the case is favorable to the board member. The board may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.[48]

A board of education member may be appointed secretary to the board, but he must serve without compensation while holding both positions.[49] In a regional school district a board member may be appointed as custodian of school moneys.[50]

For further information on the composition of boards of education refer to Chapter II, The Legal Structure of Local School Districts.

C. Meetings of the Board

The board of education performs its functions at regular or special meetings. Under the Sunshine Law, all meetings of boards of education must be held in public, with certain exceptions; the public must also be given advance notice of meetings. (See Chapter IX, Section A on the Sunshine Law).

In addition, board meetings must comply with a number of other requirements set out in the Education Laws. Each board of education must organize annually at a regular meeting held not later than 8:00 p.m.: (a) In Type I districts on March 1, or on the following day if March 1 is a Sunday; (b) In Type II districts on any day of the first week commencing on the first Monday following the annual school election, except that in districts having appointed boards of education, the meeting must be held on March 1 or on the following day if March 1 is a Sunday.[51] If the organization meeting cannot take place on the specified day, it must be held within three days thereafter.[52]

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[47] N.J.S.A. 18A:12-3.

[48] N.J.S.A. 18A:12-20.

[49] N.J.S.A. 18A:17-5.

[50] N.J.S.A. 18A:13-14, 18A:8-33.

The organization meeting constitutes a regular meeting of the board of education for the transaction of business.[53] The board must elect a president and a vice president at the organization meeting. If such officers are not elected, the county superintendent appoints them.[54]

It is the duty of the secretary of the board to give notice of the organization meeting and of all other regular or special meetings of the board.[55]

Every board of education must meet to transact business at least once every two months during the period in which the schools are in session. All board meetings must commence no later than 8:00 p.m. If at that time a quorum is not present, the meeting may be recessed until a quorum is present but not later than 9:00 p.m. If no quorum appears, the meeting may be adjourned until another day not more than seven days thereafter. Public announcement must be made of the time and date to which the meeting is adjourned. No further recess or adjournment is permissible.[56]

Special meetings of the board are called by the secretary of the board whenever the president of the board so directs or whenever a majority of the whole membership of the board requests a calling of such a special meeting.[57]

It is the duty of the secretary of the board to record the minutes of all proceedings of the board.[58] Minutes of board meetings are public records which must be open to inspection at reasonable times and places by the public.[59] (See Chapter IX on the Sunshine Law and Right to Know Law).

Every board may make its own rules for the conduct of its meetings, as long as its rules are consistent with state law. Most actions of a board require a simple majority of those voting, but certain actions require a majority vote of the full membership of the board. See Section A above.

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[51] N.J.S.A. 18A:10-3.

[52] N.J.S.A. 18A:10-3.

[53] N.J.S.A. 18A:10-5.

[54] N.J.S.A. 18A:15-1.

[55] N.J.S.A. 18A:10-4, 18A:17-7.

[56] N.J.S.A. 18A:10-6.

[57] N.J.A.C. 6:3-1.9.

[58] N.J.S.A. 18A:17-7; N.J.S.A. 10:4-14.

[59] N.J.S.A. 47:1A-2; N.J.S.A. 10:4-14.

The commissioner has held that when a majority vote of the full membership is not required, an abstention is counted as an affirmative vote unless the member abstaining expressly dissents from taking affirmative action prior to the vote.[60] However, in those cases the local boards had not previously adopted their own rule to govern the counting of an abstention. It would seem that where a local board *adopts its own reasonable rules on abstentions*, such local parliamentary rules would be upheld.

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[60] **King v. Board of Education of Asbury Park,** 39-49 S.L.D. 20; **Farmer v. Board of Education of Camden,** 1967 S.L.D. 287.

Chapter IV

Thorough and Efficient — School Finance and Education Quality

A. Robinson v. Cahill

In 1970, suit was brought in the Superior Court by a number of residents, taxpayers and officials of several municipalities challenging the constitutionality of New Jersey's system of financing public schools. The plaintiffs charged that the system was unconstitutional in that it relied too heavily on local property taxes and thus resulted in a great disparity in the quality of education offered in various districts. The plaintiffs argued, in part, that the financing method violated the specific directive of the New Jersey Constitution that:

> *The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.*[1]

On appeal, the New Jersey Supreme Court interpreted this "thorough and efficient" clause as a mandate that the State provide an equal eduational opportunity for all children and the Court held that the system of school finance was not sufficiently geared to that mandate. The Court agreed that the heavy reliance on local property taxes produced a direct relationship between a community's wealth and the amount of funds available for public education in a district. The Court also accepted the view that the quality of educational opportunity depends in substantial measure upon the number of dollars expended, notwithstanding that a multitude of other factors, including teacher availability, individual and group disadvantages and curriculum decisions, play a vital role in the educational result.[2]

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1. N.J. Const. 1947, art. 8, sec. 4, par. 1.
2. **Robinson v. Cahill,** 62 N.J. 473, 481, 515-16 (1973), **cert.** den. 414 U.S. 976 (1973);
3. **Robinson v. Cahill,** 69 N.J. 133, 141, n. 3 (1975).

The Court noted that the State had never spelled out that content of educational opportunity which constitutes a "thorough and efficient" education and stated:

> *Without some such prescription, it is even more difficult to understand how the tax burden can be left to local initiative with any hope that statewide equality of educational opportunity will emerge.*[3]

The decision made clear that the State was not prohibited from delegating its fiscal responsibility for education to the local level.[4] However, the ultimate responsibility for meeting the constitutional requirement rests with the State itself and, if the State chooses to delegate some portion of its obligation, it must do so in a manner that will insure equality of educational opportunity.[5]

To at least a limited extent, the statutory financing system struck down in *Robinson v. Cahilll* did attempt to set a minimum level of funding per pupil and to distribute state aid so as to compensate for differences of wealth among districts.[6] However, the Court noted that 67% of operating expenses were being met by local taxes, a situation inevitably resulting in gross disparities in per pupil expenditures among districts, and that the system as a whole did not adequately guarantee that the combination of local effort and state aid would yield a "thorough and efficient" education for all pupils in New Jersey's public schools.[7]

The Legislature's response to the *Robinson v. Cahill* decision was the Public School Education Act of 1975.[8] In enacting this statute, the Legislature declared its intention to fulfill the constitutional mandate (1) by defining in general terms what constitutes a thorough and efficient system of free public schools, (2) by establishing guidelines and monitoring procedures to insure progress toward thorough and efficient educational goals and (3) by establishing a funding structure to insure adequate financial resources to implement a thorough and efficient public school system.[9]

In January, 1976 the New Jersey Supreme Court held that the act was constitutional on its face and had met the "T & E" mandate, assuming that full funding of the financial aid provisions would be forthcoming from the Legislature.[10]

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[3] **Robinson v. Cahill, supra,** 62 N.J. at 516.

[4] **Id.** at 502-13.

[5] **Id.** at 509, 513.

[6] **N.J.S.A.** 18A:58-1 *et seq.*

[7] **Robinson, supra,** 62 N.J. at 460, 515-19.

[8] N.J.S.A. 18A:7A-1 *et seq.*

[9] N.J.S.A. 18A:7A-2.

Thus by enacting the Public School Education Act, the Legislature had acted to officially accept its constitutional responsibility for public education. However, the Legislature repeatedly was unable to agree upon a state taxation method to fund its financial obligations under the act.

Consequently, in May, 1976 the New Jersey Supreme Court enjoined the expenditure of funds for public schools, effective July 1, 1976, unless timely legislative action was taken to fund the act.[11] In an effort to avoid a very real crisis in New Jersey's public schools, the Legislature acted in July to adopt a tax package which included the New Jersey Gross Income Tax Act to meet the State's financial responsibility for "T & E" funding.[12] The Supreme Court dissolved the injunction against expenditure of funds, and further crisis was avoided.[13]

B. The "T & E Law"

The Public School Education Act of 1975 impacts upon local school districts in two major areas: (1) local and state financial support of schools and (2) local and state planning and implementation of a thorough and efficient education.

1. Financing – State Aid and Budget Caps

Under the "T & E Law" funding for public schools continues to be a responsibility shared jointly by the State and local school districts. Because local districts must rely on local property taxes to meet their share of the obligation, the law provides for two types of state aid which attempt to equalize to some extent the resources available for education regardless of the amount of taxable property within a community: current expense equalization aid and capital outlay and debt service equalization aid.[14]

Both types of aid are computed under complex formulas

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10. **Robinson v. Cahill**, 69 N.J. 449 (1976).
11. **Robinson v. Cahill**, 70 N.J. 155 (1976).
12. N.J.S.A. 54A:1-1 *et seq.*
13. **Robinson v. Cahill**, 70 N.J. 465 (1976).
14. N.J.S.A. 18A:7A-18; N.J.S.A. 18A:7A-19.

set out by statute which, in general, provide for greater state aid to those districts which have less property wealth available for local taxation. The formula also provides for greater state aid to those districts which have a higher expenditure level per pupil, up to a state support limit. Funds spent by a district beyond the state support limit do not trigger any corresponding increase in state aid. The formula also contains a provision which guarantees a minimum level of current expense equalization aid for districts with greater property wealth available for taxation. However, there is no minimum aid provision for capital outlay and debt service equalization aid.

The statute also provides for categorical program aid which provides additional state funding to help districts meet the extra costs of special education classes and of other classes and services including bilingual education, compensatory education, approved local vocational education and private school tuition, and supplementary and speech instruction. The amount of categorical program aid received by each district depends on the number of pupils being provided special services and upon a weighting factor for each type of handicap or for the type of other special class or service.[15]

The State also reimburses districts for the entire cost of approved transportation based upon each district's costs for the prior year. Approved transportation includes transportation for elementary school children who reside more than two miles from school, secondary pupils who live more than two and one-half miles from school, special education pupils, and pupils who attend private non-profit schools within 20 miles of their residence, the latter to a maximum cost of $250 per pupil. Unapproved transportation must be paid for entirely out of local funds.[16]

The State also provides aid to local districts by absorbing the cost of each district's employer contribution to the Teachers Pension and Annuity Fund. (TPAF – See Chapter VIII, Section C). Districts are required to pay some administrative costs out of local funds.[17]

These state aid provisions have increased the State's share of the financial burden for public education so that the State now pays approximately 40% of the total cost of public education in New Jersey contrasted with approximately 28% prior to the passage of the "T & E Law". Because the amount of state aid due to districts under the equalization aid provisions is tied to the amount which local districts choose to spend on education, the Legislature placed upon the annual growth of school budgets— a limit known as budget caps.[18] The caps were intended to limit state aid liability, to prevent large and inefficient expenditures by districts due to increased state aid and to insure local property tax relief.[19]

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[15] N.J.S.A. 18A:7A-20.

[16] N.J.S.A. 18A:58-7; N.J.S.A. 18A:46-23; N.J.S.A. 18A:39-1.

[17] N.J.S.A. 18A:66-33, 17.

On or before November 15 of each year, the commissioner must certify to each local board of education the amount by which the district may increase its budget for the next year. The amount is based upon a formula set out by statute which is calculated separately for each school district and results basically in a maximum percentage increase for each district based on the number of pupils enrolled during the pre-budget year. The maximum increase applies only to that portion of a district's budget that is funded through local taxes. To each district's budget cap figure may be added income from other sources such as transportation and categorical program aid, tuition and federal grants.[20]

There are two similar statutory formulas, one applying to districts previously spending below the state average and another for districts previously spending at or above the state average. This difference serves in general to allow lower spending districts to increase their expenditures by a greater percentage than higher spending districts. This equalizing factor is intended to bring the expenditure level per pupil in various districts closer together.

The statute also empowers the commissioner to approve the request of a local board for a greater increase than would be permitted under the formula. This exception known as a "cap waiver" can be granted on two bases. First, the commissioner may grant a waiver if an increased enrollment may reasonably be anticipated in the district. Second, a waiver may be granted if the commissioner determines that a reallocation of resources or other action taken within the budget cap spending level would be insufficient to meet the goals, objectives and standards for a thorough and efficient education established under the "T & E Law".[21] The decision of the commissioner on a cap waiver may be appealed by a local board to the State Board of Education.[22]

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[18] N.J.S.A. 18A:7A-25.

[19] Report on Budget Caps of the Joint Committee on the Public Schools, November 2, 1976.

[20] N.J.S.A. 18A:7A-25.

2. Planning and Implementation of "T & E"

As noted previously, the decision of the New Jersey Supreme Court in *Robinson v. Cahill* had broad implications beyond the realm of public school finance. One thrust of the decision was that the State had an unfulfilled obligation to spell out the content of a thorough and efficient education in furtherance of the ultimate constitutional goal of statewide equality of educational opportunity.[23]

The Legislature declared in the "T & E Law" that the goal of a thorough and efficient system of free public schools shall be to provide all children in New Jersey, regardless of socioeconomic status or geographic location, the educational opportunity which will prepare them to function politically, economically and socially in a democratic society.[24]

The Legislature also set out the major elements of a thorough and efficient school system in more specific terms:

a. Establishment of educational goals at both the State and local levels;
b. Encouragement of public involvement in the establishment of educational goals;
c. Instruction intended to produce the attainment of reasonable levels of proficiency in the basic communications and computational skills;
d. A breadth of program offerings designed to develop the individual talents and abilities of pupils;
e. Programs and supportive services for all pupils especially those who are educationally disadvantaged or who have special educational needs;

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[21] Id.

[22] N.J.A.C. 6:2-1.7.

[23] Robinson v. Cahill, supra, 62 N.J. at 516.

[24] N.J.S.A. 18A:7A-4.

f. Adequately equipped, sanitary and secure physical facilities and adequate materials and supplies;
g. Qualified instructional and other personnel;
h. Efficient administrative procedures;
i. An adequate State program of research and development; and
j. Evaluation and monitoring programs at both the State and local levels.[25]

Pursuant to legislative mandate, the State Board established further goals applicable to all public schools in the state. These goals require schools to help pupils acquire a broad range of learning, social, physical, ethical, political, vocational and general life-skills. The state board also set out a number of goals for the educational system itself including meaningful instruction, individualized educational experiences, quality teaching staff members, and cooperation with staff, parents and community groups.[26]

The state board has set out very particularized responsibilities for local boards of education in the planning and implementation of "T & E". Each local board is required to establish particular educational goals for the district and for each school within the district at least once every five years. Goals must be consistent with the intent of state educational goals and must be developed in consultation with teaching staff members, pupils, parents or guardians of pupils and other district residents. The local board must give public notice of the proposed goals or revisions thereof and must provide opportunity for comment at a public meeting.[27]

The goals are included within a written educational plan which must be adopted and implemented annually by the local board.[28] The educational plan must also include a proposed time schedule for its implementation and must identify on a five-year cycle both long and short range objectives and standards for assessing and evaluating the achievement of these objectives.[29] The plan must be developed in consultation with the chief school administrator and teaching staff members.[30] In additon to educational goals the educational plan must set out (1) objectives and standards;[31] (2) a plan for the assessment of the needs of pupils and the needs of the schools and the district as a whole;[32] (3) the educational program (curriculum) and instruction geared to achievement of the goals, objectives and standards;[33] (4) procedures for evaluation of pupil progress;[34] (5) an annual evaluation to identify pupils not meeting minimum proficiency levels and the establishment of preventive and remedial programs.[35]

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[25] N.J.S.A. 18A:7A-5.

[26] N.J.A.C. 6:8-2.1

[27] N.J.A.C. 6:8-3.2.

[28] N.J.S.A. 18A:7A-7; N.J.A.C. 6:8-3.

[29] N.J.A.C. 6:8-3.1 (c), (d).

The state board has also established a number of policies and procedures which local boards must adopt on such matters as reporting pupil progress, promotion and graduation, staffing, staff inservice programs, instructional materials and equipment, school and community relations, administrative procedures and school facilities.[36]

The commissioner is charged with the responsibility to develop and administer a statewide system for evaluating the performance of each public school.[37] Each school district is required to submit to the commissioner by July 1 of each year a report on its progress toward its goals, objectives and standards. These reports serve as a basis for an annual report of the commissioner to the New Jersey Legislature on the efforts being made to meet the standards of a thorough and efficient education.[38]

If the commissioner determines that a district has failed to show sufficient progress toward goals and standards, the commissioner must require the local board to submit a remedial plan and must assure its implementation.[39] If the remedial plan is found to be insufficient, the commissioner may determine after a plenary hearing that corrective action is necessary and may order necessary budget changes and/or inservice training for school personnel. The state board is empowered to order other appropriate corrective measures.[40]

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[30] N.J.A.C. 6:8-3.1 (a).

[31] N.J.A.C. 6:8-3.3.

[32] N.J.A.C. 6:8-3.4.

[33] N.J.A.C. 6:8-3.5, 3.6.

[34] N.J.A.C. 6:8-3.7.

[35] N.J.A.C. 6:8-3.8.

[36] N.J.A.C. 6:8-4.

[37] N.J.S.A. 18A:7A-10; N.J.A.C. 6:8-6.1.

[38] N.J.S.A. 18A:7A-11.

[39] N.J.S.A. 18A:7A-14.

On or before December 1 of each year, the local board must submit to the commissioner, through the office of the county superintendent, a copy of its proposed budget for the next school year. The county superintendent must determine the adequacy of the budget with regard to the board's annual reports and its long and short range objectives. The county superintendent must review and approve the proposed budget prior to its advertisement. If changes in the proposed budget are recommended by the office of county superintendent after review, the county superintendent must consult with the chief school administrator and the local board.[41]

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[40] N.J.S.A. 18A:7A-15.

[41] N.J.A.C. 6:8-5.1.

Chapter V

The Educational Environment

The prime focus of the discretionary powers of local boards of education are the decisions which directly determine the educational environment of the children in New Jersey's public schools. It is to those decisions that the bulk of school board activity and energy should be directed.

The previous chapter described a number of legal provisions under the "T & E Law" directly affecting both educational planning and content. This chapter describes other major elements of the law which apply as the board houses its students, provides for their attendance, health and safety, and establishes the school program.

A. School Lands and Buildings

The local school board has broad authority and responsibility for the establishment and maintenance of the school facilities. The board of education holds title to the property, real and personal, of the school district and has supervision, control and management of all such property.[1] The board generally may acquire, receive, hold, hold in trust and sell and lease real estate and personal property and may take and condemn lands and other property for school purposes.[2] In addition, it may accept any gift or grant of land, of money or of other personal property.[3] Finally, it may undertake capital projects the cost of which may be provided by taxes or the issuance of bonds appropriately authorized, such as: (a) acquisition by purchase or condemnation of lands; (b) grading, draining, landscaping and improvement of lands; (c) acquisition, construction, reconstruction, remodeling, alteration, enlargement or major repair of buildings; (d) purchase of the original furniture, equipment and apparatus, or of major renewals of furniture, equipment and apparatus for any building.[4]

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[1] N.J.S.A. 18A:20-1.

[2] N.J.S.A. 18A:20-2, 3.

[3] N.J.S.A. 18A:20-4.

The board in a Type II district, without prior approval of the voters, may: (a) rent buildings for school purposes, in case of emergency, on a year-to-year basis or for a term not to exceed five years; and (b) take an option not to exceed one year in duration and not to exceed the fair market value of such option, on the purchase of land. The option may be exercised only after purchase of the land has been approved by the voters.[5] The board in a Type II district may also when authorized by the voters: (a) purchase, take and condemn lands within the district; (b) purchase, take and condemn lands not to exceed 50 acres in an adjoining municipality; (c) grade, drain, landscape and improve its lands; (d) erect, lease for a term not exceeding 40 years, enlarge, improve, repair or furnish buildings; and (e) borrow money therefor.[6]

Any board may dispose of unsuitable or no longer needed lands: (a) by public sale which has been advertised once a week for at least two weeks.[7] Sale must be to the highest bidder but the board is permitted to set a minimum price and to provide for acceptance or rejection of bids not later than the second regular meeting after the sale;[8] (b) by private sale to the state or one of its political subdivisions without advertisement; (c) by transfer for a nominal consideration to the municipality or any agency thereof, to a volunteer fire company or rescue squad, to a U.S. veterans organization or to a nonprofit child care service organization incorporated under New Jersey law. The board may stipulate that if the property ceases to be used for the purposes intended, it shall revert to the board.[9] In addition the board may exchange land not needed for school purposes for other lands located in the district and at least equal in value.[10]

A school district may establish public playgrounds and recreation places.[11] It may accept, maintain, manage and control public playgrounds and recreation places conveyed by the municipal governing body when such a transfer is agreed upon.[12] Further, it may join with a municipal governing body or the board of chosen freeholders in acquiring, improving, equipping, operating and maintaining playgrounds, playfields, gymnasiums, public baths, swimming pools, and indoor recreation centers and may appropriate money therefor.[13] The statutes provide that a board shall have full control over all lands, public playgrounds, and recreation places acquired or leased by it and may adopt rules for their use and for the conduct of persons on or using them.[14]

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[4] N.J.S.A. 18A:21-1.

[5] N.J.S.A. 18A:20-4.1.

[6] N.J.S.A. 18A:20-4.2.

[7] N.J.S.A. 18A:20-6.

[8] N.J.S.A. 18A:20-7.

[9] N.J.S.A. 18A:20-9

[10] N.J.S.A. 18A:20-8.

[11] N.J.S.A. 18A:20-17.

Under authority asserted by the state board, a local board must obtain state approval of all plans and specifications for the erection of any building or part thereof before contracts are entered into.[15] The board must also follow the statutory procedure for drafting plans, advertising and awarding bids and completing construction contracts. A discussion of these subjects is included in Chapter XII, School Business Practices.

To protect the community's investment, the board must keep all insurable property, real and personal, insured against loss or damage by fire and against other loss and damage as it deems appropriate.[16]

Under rules adopted by it, the board may permit the use of the schoolhouse or rooms therein, or the school grounds, when not in use for school purposes, for (a) persons giving and receiving instruction in any branch of education, learning, or the arts; (b) public library purposes; (c) holding such social, civic and recreational meetings and entertainments and for such other purposes as may be approved by the board; (d) such meetings, entertainments, and occasions where admission fees are charged as may be approved by the board; and (e) polling places, holding elections, the registration of voters, and holding political meetings.[17]

Under prior law, a board was not liable for injury to the person from the use of any public grounds, buildings, or structures. That law was repealed by the enactment in 1972 of the New Jersey Tort Claims Act under which all governmental entities and public bodies were made subject to limited liability for such injuries.[18] Under this law, a school district is liable for injuries caused by any dangerous condition existing on school district property where the negligence of a district employee created the dangerous condition. The district is also liable if it had actual notice of the dangerous condition or if the condition was of such an obvious nature that it should have been discovered.[19]

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[12] N.J.S.A. 18A:20-18

[13] N.J.S.A. 18A:20-22

[14] N.J.S.A. 18A:20-20.

[15] N.J.A.C. 6:22-2.2.

[16] N.J.S.A. 18A:20-25.

[17] N.J.S.A. 18A:20-34.

B. Attendance and Transportation

Attendance at public school is free to any person over five and under twenty years old:

(a) who is domiciled in the school district;

(b) who lives in the home of a resident and is supported by that person gratis as if he were that person's own child. The board may require a sworn statement that the child living there is wholly supported, with all the child's personal obligations assumed, and will be supported for the whole year and not merely the school term;

(c) whose parent or guardian is residing temporarily in the school district;

(d) for whom the New Jersey Division of Youth and Family Services is acting as guardian;

(e) who is placed in the home of a resident by the courts or by any society, agency, or institution incorporated in this state and having as its object the care and welfare of neglected children, except that no board shall be required to accept an unreasonable number of such children.[20]

The board may, if it chooses, admit persons over the age of twenty who, except for age, would be entitled to attend school.[21] The board may also admit non-residents upon such terms and with or without payment of tuition, as the board prescribes.[22]

Children between six and sixteen years of age must regularly attend a public school or a day school where instruction equivalent to the public schools is provided.[23] Children who are so handicapped that they cannot attend school may receive equivalent instruction elsewhere.[24] Any attendance officer who finds a truant child between six and sixteen years of age must take the child to his parent (or guardian) or to the teacher in the school he is required to attend.[25] The attendance officer may also proceed against the parents or guardians, in cases of willful and continued truancy.[26]

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[18] N.J.S.A. 59:1-1 *et seq.*

[19] N.J.S.A. 59:4-2.3.

[20] N.J.S.A. 18A:38-1, 2.

[21] N.J.S.A. 18A:38-4.

[22] N.J.S.A. 18A:38-3.

No child between the ages of four and twenty years may be excluded from any public school on account of race, creed, color, national origin, or ancestry. Board members who vote such an exclusion may be found guilty of a misdemeanor.[27]

Children who have never attended any public or private school may be admitted to public school on or before October 1 following the opening of the fall term, and at no other time except by a majority vote of all the board members.[28] The board of education is not required to accept by transfer from another public or private school any pupil who was not eligible by reason of age for admission on October 1 of that school year, but the board may admit such pupil in its discretion.[29] Pupils may be admitted to demonstration schools maintained in connection with a state teachers college. The tuition to be paid by the board shall be determined by the district board and the college board of trustees. Such pupils are counted in the calculation of state aid to the district.[30]

If a board of education has the necessary accommodations it may receive, and may be required to receive by order of the state board, pupils from another district lacking facilities.[31] Tuition for such pupils is paid by the sending district.[32] A child who lives remote from school in the district in which he lives may, with the written consent of the county superintendent, attend school in an adjoining district.[33] A district which does not have a high school must designate a high school or schools for its pupils to attend.[34] Whenever two or more high schools have been designated, pupil allocation must be made. If the designation existed in the 1943-44 school year, the same apportionment as in that year remains in effect. If the first designation occurred after that year, then the apportionment of the first year remains in effect.[35] No designation or allocation of pupils to receiving high schools can be changed or withdrawn, nor can a designated school refuse to continue to receive high school pupils from the sending district except for good reason and upon application made to and approved by the commissioner.[36]

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[23] N.J.S.A. 18A:38-25, 26.
[24] N.J.S.A. 18A:46-13, 14.
[25] N.J.S.A. 18A:38-28.
[26] N.J.S.A. 18A:38-31.
[27] N.J.S.A. 18A:38-5.1.
[28] N.J.S.A. 18A:38-6.
[29] N.J.S.A. 18A:38-5.
[30] N.J.S.A. 18A:38-24.
[31] N.J.S.A. 18A:38-8.
[32] N.J.S.A. 18A:38-19.

A board of education may, in its discretion, permit pupils from its district to attend school in another district and pay tuition therefor: (a) when the board does not furnish instruction in a particular high school course of study; (b) for attendance at an approved evening high school; (c) for instruction beyond the 12th grade.[37] A board of education which receives pupils from another district is entitled to charge and collect tuition from the sending district not to exceed the actual cost per pupil.[38]

A district receiving pupils from other districts on a tuition basis cannot exclude such pupils because of nonpayment of tuition; provided that the sending board delivers to the receiving board a school warrant for the amount due, bearing interest at the legal rate. A sending district cannot withdraw such pupils during the year except with the consent of the receiving board.[39] When a receiving district must enlarge its facilities to accommodate pupils from another district, it may enter into an agreement with the sending district for the continuation of the sending-receiving relationship for up to ten years.[40]

A board must provide for the transportation of pupils who live remote from the school.[41] Remote is defined as more than two and one half miles for high school pupils and more than two miles for elementary.[42] When a district provides transportation for remote public school pupils, it must also furnish transportation to its pupils who attend non-public schools provided the non-public school is non-profit, is within 20 miles, and the cost does not exceed $250 per pupil. If the cost is more than $250, the board is relieved of providing the transportation but must pay the parent $200 in lieu of such service. The board is also relieved of furnishing transportation to non-public school pupils if the only transportation provided is for handicapped children or pupils attending vocational schools.[43]

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[33] N.J.S.A. 18A:38-9.

[34] N.J.S.A. 18A:38-11.

[35] N.J.S.A. 18A:38-12.

[36] N.J.S.A. 18A:38-13.

[37] N.J.S.A. 18A:38-15, 16, 17, 18.

[38] N.J.S.A. 18A:38-19.

[39] N.J.S.A. 18A:38-23.

[40] N.J.S.A. 18A:38-20.

A board of education may provide transportation for pupils who are not remote from the schoolhouse. The cost of such transportation may not be included in calculating the amount of state aid for transportation of pupils.[44] However, a board of education must furnish transportation to handicapped children for lesser distances than remote if the board of education finds, upon the advice of the medical examiner, the handicap is such as to make transportation necessary or advisable.[45]

Any local board of education may provide transportation for pupils by buses owned by it or it may contract for such transportation for a term not exceeding four years. All transportation contracts require the approval of the county superintendent.[46] Two or more boards may enter into an agreement to provide jointly for the transportation of pupils.[47]

No school bus driver may be assigned to transport pupils until his name, address, photograph and fingerprints have been filed with the county superintendent.[48] Board members or contractors who fail to do so may be found guilty of a misdemeanor.[49]

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41. N.J.S.A. 18A:39-1.
42. **Trossman v. Board of Education of Highland Park,** 69 S.L.D. 61; N.J.A.C. 6:21-1.3.
43. N.J.S.A. 18A:39-1.
44. N.J.S.A. 18A:39-1.1.
45. N.J.S.A. 18A:46-23.
46. N.J.S.A. 18A:39-2.
47. N.J.S.A. 18A:39-11, 12, 13, 14, 15, 16.
48. N.J.S.A. 18A:39-17, 18, 19.
49. N.J.S.A. 18A:39-20.

Finally, it must be noted that all pupil transportation must be furnished in accordance with rules and regulations of the state board.[50]

C. Pupil Health and Safety

Every board of education must employ at least one physician licensed to practice medicine or surgery in New Jersey as its medical inspector.[51] Every pupil must be examined by the medical inspector, or the nurse under the immediate direction of the medical inspector, to learn whether any physical defects exist.[52] The scope and frequency of the examinations are determined by rules of the state board.[53] A pupil who presents a statement signed by his parent or guardian that a medical examination interferes with the free exercise of his religious beliefs may be examined only to the extent as may be necessary to determine whether he is ill or infected with a communicable disease or to determine his fitness to participate in the health, safety and physical education course.[54]

Upon the recommendation of the school physician or the school nurse, or in their absence on his own initiative, the principal may exclude from school any pupil who shows evidence of departure from normal health, who has been exposed to communicable disease, or whose presence is certified by the medical inspector to be detrimental to the health or cleanliness of other pupils. The principal must notify the parent or guardian of the reason for the exclusion.[55] The parent must take appropriate steps to remedy the cause of the exclusion where the cause is within his control, and, if he fails to do so within a reasonable time, he may be proceeded against as a disorderly person.[56] A board may, on account of the prevalence of any communicable disease or to prevent the spread of communicable diseases, prohibit the attendance of any teacher or pupil and may specify the time during which the teacher or pupil shall

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50. N.J.S.A. 18A:39-21; N.J.A.C. 6:21-1 *et seq.*
51. N.J.S.A. 18A:40-1.
52. N.J.S.A. 18A:40-4.
53. N.J.A.C. 6:29-1.1 *et seq.*
54. N.J.S.A. 18A:40-4.
55. N.J.S.A. 18A:40-7, 8.
56. N.J.S.A. 18A:40-9.

remain away from school.[57]

A board is required to insure compliance with regulations established as part of the State Sanitary Code pertaining to the immunization of school children against disease and prohibiting attendance by a child who has not been immunized.[58] A board may provide at public expense the necessary equipment, materials and services for immunizing pupils from diseases against which pupils are required to be immunized by the State Sanitary Code or for diseases against which immunization may be recommended by the State Department of Health.[59] A pupil may be exempted from mandatory immunization upon presentation of a written statement of parent or guardian objecting thereto on the ground that the proposed immunization interferes with the free exercise of the pupil's religious rights.[60]

The presence or absence of tuberculosis infection in any or all of the pupils must be determined periodically. The frequency, procedures and selection of pupils for the examination must be in accordance with the rules of the state board.[61] The board may provide the equipment, materials and services for the examination or it may contract with a hospital or public health agency approved by the State Department of Health.[62] Any pupil found to have communicable tuberculosis must be excluded from school. A report of each case must be filed by the school physician with the local board of health.[63] Any records and reports of tuberculosis testing are the confidential property of the board, but are open to officers of state and municipal boards of health.[64]

A health record of each pupil must be kept in which the findings of each examination must be entered. A pupil's health record is the property of the board of education. It must be forwarded to the school to which the pupil is transferred, if the school is known.[65]

The board of education of any school district may pro-

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57. N.J.S.A. 26:4-6.
58. N.J.S.A. 26:1A-9.
59. N.J.S.A. 18A:40-20.
60. N.J.S.A. 26:1A-9.1.
61. N.J.S.A. 18A:40-16
62. N.J.S.A. 18A:40-17.
63. N.J.S.A. 18A:40-11.
64. N.J.S.A. 18A:40-19.
65. N.J.S.A. 18A:40-4.

vide such equipment, supplies and services as in its judgment will aid in the preservation and promotion of the health of the pupils.[66] Whenever a board of health of any municipality deems the closing of schools necessary because of epidemic or because of ill health, it must notify the board of education. The board of education may then close the schools under its control. The schools may not be reopened until the board of education is satisfied that the danger is removed.[67]

Every school of two or more rooms or of one room when located above the first story of a building, must have two fire drills each month.[68] Furnace room, hallway, or stairtower fire or smoke doors must be closed at all times the school building is occupied.[69]

Each pupil and teacher must wear industrial quality eye protective devices while attending classes in which any dangerous process is taught, exposure to which might have a tendency to damage the eyes. Visitors to such classes must also wear such protective devices.[70] The kind, type and quality of the protective devices must comply with standards set by the commissioner.[71]

A board may provide for the organization of school safety patrols and for the appointment, with the permission of parents, of pupils as members of these patrols. No liability attaches to the board or any individual teacher or principal by virtue of the organization, maintenance, or operation of a school safety patrol.[72] Safety patrol pupils, however, may not direct traffic.[73]

A board may arrange for and pay the premiums for policies of accident insurance with any authorized insurance company, to provide for payment to pupils injured while participating in, practicing or training for, or traveling to and from games or contests conducted by the school or school district, and for injuries in connection with either the conduct of regular curricular and extracurricular programs of the district or with student travel to and from the places where such programs are conducted where such travel is made necessary by such programs.[74] The pupils may be required to pay a proportionate share of the premium for the benefit of such insurance, but no pupil can be forced to make payment if he elects not to participate in the insurance coverage.[75] These provisions are not construed as imposing liability upon the board for any injuries sustained in connection with a game or physical education program.[76]

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[66] N.J.S.A. 18A:40-6.

[67] N.J.S.A. 18A:40-12.

[68] N.J.S.A. 18A:41-1.

[69] N.J.S.A. 18A:41-2.

[70] N.J.S.A. 18A:40-12.1.

[71] N.J.S.A. 18A:40-12.2.

[72] N.J.S.A. 18A:42-1.

[73] N.J.A.C. 6:29-5.3(g).

Public school law enforcement officers may be employed and stationed in the schools upon a finding of need, with the approval of the county superintendent and upon application to and authorization by the commissioner.[77]

Boards of education may be held liable for injuries sustained by students due to the existence of dangerous conditions existing on property owned or controlled by the district.[78] The board may also be held liable for certain negligent acts or omissions of school district employees which result in injury to students.[79]

D. The School Program

Although the board members themselves may have little direct contact with the pupils in their schools, the impact of board decision profoundly affects these pupils' lives. The board determines annually the dates between which the schools of the district will be open.[80] Courses of study suited to the ages and attainments of all pupils must be provided. No course of study may be adopted or altered except by a recorded roll call majority vote of the full membership of the board.[81] Textbooks are selected by a recorded roll call majority vote of the full membership of the board,[82] and are loaned to pupils free of charge.

The Legislature has mandated the teaching of particular areas of study in all public schools as follows:

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[74] N.J.S.A. 18A:43-1.
[75] N.J.S.A. 18A:43-2.
[76] N.J.S.A. 18A:43-3.
[77] N.J.S.A. 18A:17-43.
[78] N.J.S.A. 59:4-2.
[79] N.J.S.A. 59:2-2.
[80] N.J.S.A. 18A:36-2.
[81] N.J.S.A. 18A:33-1.
[82] N.J.S.A. 18A:34-1.

(a) a two-year course in the history of the U.S., including materials on black history recommended by the commissioner, is required for all high school students;[83]

(b) the study of community civics, the geography, history and civics of New Jersey, and the privileges and responsibilities of citizenship, in appropriate grades;[84]

(c) the nature of alcoholic drinks and narcotics and their effect upon the human system in such manner as may be adapted to the age and understanding of the pupils and sufficiently emphasized in appropriate places in the curriculum;[85]

(d) a course in health, safety and physical education, adapted to the ages and capabilities of the pupils. Every pupil must take the course unless excused by the school medical inspector as being physically incapable. The time devoted to the course in physical education must aggregate at least two and one-half hours per school week;[86]

(e) instruction in accident and fire prevention in appropriate grades and classes;[87]

(f) instruction in the Constitution of the United States beginning not later than seventh grade.[88]

The board may provide by contract and appropriate funds for the support and maintenance of existing museum facilities and services for the use and benefit of pupils.[89]

Appropriate exercises are to be held on the last school day before Lincoln's Birthday, Washington's Birthday, Decoration Day, Columbus Day, Veteran's Day, and Thanksgiving Day, and such other patriotic holidays as are established by law.[90] Appropriate exercises for Flag Day are to be held in every public school on June 14 of every year.[91] Arbor Day is to be observed in all public schools with appropriate programs prepared by the superintendent of schools.[92] Commodore John Barry Day is to be observed in each public school on September 13, or the nearest school day if the 13th occurs on a weekend, with appropriate exercises as prescribed by the commissioner.[93]

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[83] N.J.S.A. 18A:35-1.

[84] N.J.S.A. 18A:35-3.

[85] N.J.S.A. 18A:35-4.

[86] N.J.S.A. 18A:35-5, 7, 8.

[87] N.J.S.A. 18A:6-2.

[88] N.J.S.A. 18A:6-3.

[89] N.J.S.A. 18A:53-1.

[90] N.J.S.A. 18A:36-13.

[91] N.J.S.A. 18A:36-6.

Every board must display a United States flag on or near the school building during school hours, and have a flag in each assembly room and classroom. The board must require the pupils to salute the flag and pledge the oath of allegiance on every school day. Children with conscientious scruples against such pledge and salute and children of accredited representatives of foreign governments may not be required to make the pledge and salute.[94] (See Chapter VI, Section I, on the pledge of allegiance).

E. The Handicapped Pupil

Laws relating to the education of handicapped children in New Jersey are found at both the state and federal levels.

1. New Jersey Statutes

Each board of education, according to rules prescribed by the commissioner, must provide for the identification of any children between the ages of five and twenty residing in the district and enrolled in the public or nonpublic schools of the state who cannot be properly accommodated because of handicaps.[95] Each handicapped child must be examined and classified under one of these categories: mentally retarded, visually handicapped, auditorily handicapped, communication handicapped, neurologically or perceptually impaired, orthopedically handicapped, chronically ill, emotionally disturbed, socially maladjusted or multiply handicapped. The proposed classification must be reported to the parent or guardian of the child and an opportunity provided, prior to implementation of the classification, for consultation by such parent or guardian with the appropriate special educational services personnel of the district. The parent or guardian shall also be provided an opportunity for further review of the classification in the Department of Education, pursuant to rules of the state board.[96] The category of mentally retarded children is divided into three subcategories: educable mentally retarded children, trainable mentally retarded children, and children eligiible for day training (the most severely retarded children).[97]

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[92] N.J.S.A. 18A:36-9.

[93] N.J.S.A. 18A:36-10, 11, 12.

[94] N.J.S.A. 18A:36-3.

[95] N.J.S.A. 18A:46-6.

Each board must employ, either separately or jointly with other boards, a psychological examiner who, together with other special education personnel, shall administer the required procedures for diagnosis and classification of handicapped pupils. In lieu of employing a psychological examiner, the board or boards may contract to use services of a clinic or agency approved by the commissioner.[98]

A pupil may be refused admission or temporarily excluded for a reasonable time pending examination and classification.[99] A child who has been diagnosed and classified as eligible for day training may be totally excluded from school. The child's parent, however, may request reexamination after one year from the last previous examination has elapsed.[100] The names and addresses of all children denied admission or excluded, and their parents, must be reported to the board of education and to the county superintendent of schools.[101] However, it is the duty of each board to provide suitable facilities and programs of education for all handicapped children, except those so mentally retarded as to be classified as eligible for day training.[102] For these severely retarded children, the State Board of Education and the Department of Human Services have the duty to provide facilities and programs.[103]

The facilities and programs of education for handicapped children must be provided by one or more of the following:

(a) a special class or classes in the district, including a class or classes in hospitals, convalescent homes, or other institutions;

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[96] N.J.S.A. 18A:46-8.

[97] N.J.S.A. 18A:46-9.

[98] N.J.S.A. 18A:46-11.

[99] N.J.S.A. 18A:46-16.

[100] N.J.S.A. 18A:46-17.

[101] N.J.S.A. 18A:46-18.

[102] N.J.S.A. 18A:46-13.

[103] N.J.S.A. 18A:46-18.1; N.J.S.A. 30:1B-1.

(b) a special class in the public schools of another district in this state or any other state;

(c) joint facilities provided by agreement between school districts;

(d) a jointure commission program;

(e) a State of New Jersey operated program;

(f) supplementary instruction at school.

If the board of education, with the consent of the commissioner, determines that it is impractical to provide the required services by the above means, it may either send children capable of benefiting from a day school instructional program to privately operated nonsectarian day classes in New Jersey or another state, or provide individual instruction at home or in a school.[104]

The commissioner may require boards which have the necessary facilities for handicapped students to receive pupils from other districts needing such services.[105] Any board of education, jointure commission, state operated facility or private school which receives handicapped pupils may charge tuition which is payable by the sending board of education. The tuition rate in a nonpublic school may not exceed the maximum day class cost of education per pupil of children in similar classes in public schools.[106] A board of education which sends handicapped pupils to another district may not withdraw such pupils for the purpose of entering them in the schools of another district except for good and sufficient reason and after an application to and approval by the commissioner.[107] Transportation of handicapped children who live at distances less than remote from school must be provided when it is found by the board, upon the advice of the medical examiner, that such transportation is necessary or advisable.[108]

Two or more school districts may provide jointly for the facilities, examination or transportation required for handicapped children under an agreement adopted by each board and approved by the commissioner.[109] The agreement may provide for the establishment of a jointure commission composed of representatives of each board with power to provide and maintain the necessary facilities, employ staff, administer the educational program and other required services, and apportion the costs among the participating districts.[110]

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[104] N.J.S.A. 18A:46-14.

[105] N.J.S.A. 18A:46-20.

[106] N.J.S.A. 18A:46-21.

[107] N.J.S.A. 18A:46-22.

[108] N.J.S.A. 18A:46-23.

[109] N.J.S.A. 18A:46-24.

The commissioner appoints a county supervisor of child study and such additional personnel, constituting a child study team, as deemed necessary to perform county level services for handicapped children. The child study team functions in consultation with local boards of education in providing the facilities, programs and services required for handicapped children.[111]

Furthermore, at the county level, the board of chosen freeholders may establish a county special services school district for the education and treatment of handicapped children.[112] The board of education for such a district consists of the county superintendent of schools, ex officio, and six persons to be appointed by the director of the board of chosen freeholders with the advice and consent of the remaining members of such board.[113] The board of education of the county special services school district has all the powers provided by law for other school districts, subject to the additional restrictions provided by statute.[114]

Boards of education of school districts within the county may contract with the board of education of the county special services school district in order to send pupils to schools established by the latter. The sending districts must pay tuition, the amount being fixed by a statutory formula. The schools of the county special services school district must accept all eligible pupils within the county, so far as facilities permit. Pupils residing in other counties may also be accepted if facilities are available.[115]

2. Federal Statutes

The first federal statute of which local school boards must be aware is Section 504 of the Rehabilitation Act of 1973. This section states: "No otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[116] Regulations implementing Section 504 became effective on June 3, 1977.[117] The regulations define and forbid acts of discrimination against qualified handicapped persons both in employment[118] and in the operation of educational programs and activities receiving federal assistance. A "qualified handicapped person" means, with respect to preschool, elementary, or secondary educational services, a handicapped person (1) of an age during which nonhandicapped persons are provided such services or (2) of any age during which it is mandatory under state or federal law to provide such services to handicapped persons.[119]

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[110] N.J.S.A. 18A:46-25, 26, 27, 28.

[111] N.J.S.A. 18A:46-3, 5.

[112] N.J.S.A. 18A:46-29.

[113] N.J.S.A. 18A:46-35.

[114] N.J.S.A. 18A:46-38.

[115] N.J.S.A. 18A:46-31.

The essential requirement of the regulations is that programs must be available and accessible to handicapped students on a nondiscriminatory basis.

Subpart C addresses the problem of inaccessibility based on building design and establishes several requirements.[120] All newly constructed facilities and most alterations to existing facilities must be made readily accessible to and usable by handicapped persons. The regulations do not go so far, however, as to require that every room, stairway, office, etc. of an existing or newly constructed facility be accessible to handicapped students. The critical requirement is that each program or activity, when viewed in its entirety, must be accessible to handicapped students.[121]

Subpart D of the Secretary's regulations apply specifically to pre-school, elementary and secondary education.[122] Boards of education must undertake to identify and locate every qualified handicapped person who is not receiving a free education and notify such persons and their parents of the board's duty to provide such an education.[123] The education provided must be "appropriate" to the educational needs of the handicapped individual. The education must be provided free of charge to the handicapped pupil. Even if the board places a handicapped student in a program operated by another entity, the board must absorb at least the tuition costs, in the absence of funding from another public or private agency. However, if the board makes available a free appropriate education, and the parents choose to place the handicapped pupil in a private school, or other school, the resulting expenses need not be paid by the board.[124]

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[116] 29 U.S.C.A. §794.

[117] 42 *Fed. Reg.* 22676 *et seq.* (1977).

[118] See Chapter VIII, section K (3).

[119] 42 *Fed. Reg.* 22678 (1977).

[120] 42 *Fed. Reg.* 22681 (1977).

[121] *Id.*

[122] 42 *Fed. Reg.* 22682 *et seq.* (1977).

The regulations require that each qualified handicapped person be educated with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. Thus, a handicapped person must be placed in a regular educational setting, unless the board can demonstrate that the person's education cannot be achieved satisfactorily in the regular environment. A board may, however, operate a separate facility for handicapped persons as long as the facility and the services and activities provided therein are comparable to the board's other facilities, services and activities.[125]

The regulations further provide for evaluation and testing procedures. Placement decisions can only be made after consideration of the test results and other information. Such other information should come from a variety of sources, including recommendations of the teacher, physical condition of the student, social or cultural background, and adaptive behavior. The placement decision must be made by a group of persons, including persons knowledgeable about the child.[126] Furthermore, the school district must establish a system of procedural safeguards. These procedural safeguards include notice, an opportunity for the child's parents to examine relevant records, representation by counsel, an impartial hearing with opportunity for participation by the child's parents, and a review procedure.[127]

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123. 42 *Fed. Reg.* 22682 (1977).

124. *Id.*

125. *Id.*

126. *Id.*

127. 42 *Fed. Reg.* 22683 (1977).

A school district must also provide handicapped pupils an equal opportunity for participation in nonacademic and extracurricular activities and services. If personal, academic, or vocational counselling is being provided, the district must ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.[128]

The second federal statute with which local boards should be familiar is the Education of the Handicapped Act of 1970, as amended by the Education for All Handicapped Children Act of 1975.[129] The 1970 Act created within the United States Office of Education a bureau for the education and training of the handicapped in order to administer and implement programs for such education and training.[130]

Under the 1975 Act, the U.S. Commissioner of Education is authorized to make grants for part, or all, of the cost of altering existing buildings and equipment for removal of architectural barriers to handicapped pupils. Applications for such funds may be made by any state or local educational agency or intermediate educational unit (e.g., a county special services district).

The bulk of the 1975 amendments are found in Subchapter II—"Assistance to States for Education of Handicapped Children."[131] Subchapter II establishes maximum amounts which may be granted to states after Congress has enacted annual appropriations. These maximums are based on a sliding-scale percentage of the national average per pupil expenditure multiplied by the number of handicapped children being served in the school districts of the state.[132] Of the federal aid granted to each state for the fiscal year ending September 30, 1978, fifty per cent is allocated to the state education agency and fifty per cent to local education agencies.[133] During subsequent years the local entitlement will increase to seventy-five per cent. The state agency may use five per cent of its share or $200,000, whichever is greater, for administrative costs with the remainder used to provide support services and direct services to handicapped students.[134] Each local district is entitled to a share of these federal funds based upon its percentage of the total statewide number of handicapped students.[135]

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[128] *Id.*

[129] 20 *U.S.C.A.* §§ 1401 *et seq.*

[130] 20 U.S.C.A. §1402.

[131] 20 U.S.C.A. §§1411 *et seq.; see also* 42 *Fed. Reg.* 42474 *et seq.*

[132] 20 U.S.C.A. §1411 (a). Thus, for the fiscal year ending September 30, 1978, each state is authorized to receive five percent of the national average per pupil expenditure multiplied by the number of handicapped children receiving an education in the state. By the fiscal year ending September 30, 1982, the five per cent figure will increase to forty per cent. To guard against the possibility of states over-inflating the number of handicapped children in order to receive increased federal aid, the statute limits this number to a maximum of twelve per cent of all children aged five to seventeen, inclusive, in the state.

In order to receive federal assistance, a state must have in effect a policy that assures all handicapped children the right to a free appropriate education.[136] A free appropriate education includes the requirement that an individualized program for each handicapped child be established at the beginning of each school year, which is reviewed and revised periodically.[137] The state must assure that a free appropriate education will be available by September 1, 1978 for all handicapped children between the ages of three and eighteen. Furthermore, such an education must be available for all handicapped persons between the ages of three and twenty-one not later than September 1, 1980. The state must also establish procedures to assure that, to the maximum extent appropriate, handicapped children are educated with children who are not handicapped. Evaluation materials must not be racially or culturally discriminatory. Finally, the state must assure that procedures are established for consultation with individuals involved with the education of handicapped children, with the parents of such children, and with other interested handicapped individuals.[138]

A local district must submit an application to the state educational agency in order to receive payments for any fiscal year. The application must assure that payments will be used for the excess costs of providing special education and related services to handicapped children. The district must

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133. 20 U.S.C.A. §1411 (b).
134. 20 U.S.C.A. §1411 (c).
135. 20 U.S.C.A. §1411.
136. 20 U.S.C.A. §1412.
137. 20 U.S.C.A. §1414(a) (5).
138. 20 U.S.C.A. §1412.

spend a certain minimum amount for the education of its handicapped children before federal funds are used. The district's application must state that all handicapped children residing within the district will be identified, located and evaluated.

The local programs must also establish the goals of providing full educational opportunities to all handicapped children, including (1) the establishment of priorities for providing a free appropriate public education to all handicapped children, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education, (2) the participation of and consultation with the parents or guardians of such children, and (3) to the maximum extent practicable, the provision of special services to enable such children to participate in regular educational programs.[139]

Each school district receiving assistance under the Education for All Handicapped Children Act of 1975 must assure that handicapped children and their parents are guaranteed procedural safeguards. These procedures include, but shall not be limited to: (1) an opportunity for the parents of a handicapped child to examine all relevant records pertaining to the identification, evaluation and educational placement of a child, (2) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the state, (3) written prior notice to the parents whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation or educational placement of the child, (4) notice which fully informs the parents in the parents' native language of all procedures available to them, and (5) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education to such child. When parents register a complaint, they are entitled to an impartial due process hearing to be conducted by the state educational agency or local educational agency, as determined by state law or by the state educational agency. Any party to such a hearing shall be accorded: (1) the right to be accompanied by counsel and by persons with special knowledge of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a record of the hearing, and (4) the right to written findings of fact and decisions.[140]

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[139] 20 U.S.C.A. §1414.

At the present time, the New Jersey Administrative Code contains a chapter of regulations governing the education of handicapped children. These state regulations, however, are currently in the process of complete revision in order to insure compliance with Section 504 of the Rehabilitation Act and the Education for All Handicapped Children Act of 1975 and the federal regulations adopted pursuant thereto.

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[140] 20 U.S.C.A. §1415.

[141] N.J.A.C. 6:28-1.1 *et seq.*

Chapter VI

Students' Rights and Responsibilities

The right to a free public school education *for all* New Jersey children between the ages of five and eighteen is guaranteed by the New Jersey Constitution.[1] The statutes provide that the public schools are to be free to any person over five and under twenty years of age who is domiciled within the school district.[2] State law also requires compulsory education for children between the ages of six and sixteen.[3]

This right to education has been made subject to certain restrictions. Students must submit to the authority of their teachers, they must pursue their prescribed courses of study, and they must comply with those rules that have been established by law for the governance of their schools.[4] Those students who do not obey the reasonable rules of the school system or who otherwise act in a manner so as to disrupt the school system are subject to punishment and to suspension or expulsion from school.[5]

The sections which follow deal with suspension and expulsion and other areas affecting the rights and responsibilities of students.

A. Suspension and Expulsion

Conduct which constitutes good cause for suspension or expulsion of a student guilty of such conduct includes, but is not limited to, any of the following:

(a) continued and willful disobedience;

(b) open defiance of the authority of any teacher or person having authority over him;

(c) conduct of such character as to constitute a continuing danger to the physical well-being of other people;

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[1] N.J. Const. 1947, art. 8, sec. 4, par. 1.

[2] N.J.S.A. 18A:38-1.

[3] N.J.S.A. 18A:38-25.

[4] N.J.S.A. 18A:37-1.

[5] N.J.S.A. 18A:37-2.

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(d) physical assault on another pupil or upon any teacher or other school employee;

(e) taking, or attempting to take personal property or money from another pupil, or from his presence, by means of force or fear;

(f) willfully causing, or attempting to cause, substantial damage to school property;

(g) participation in an unauthorized occupancy by any group of pupils or others of any part of any school or other building owned by any school district and failure to leave such school or other facility promptly after having been directed to do so by the principal or other person then in charge of such building or facility;

(h) incitement which is intended to and does result in unauthorized occupation by any groups of pupils or others of any part of a school or other facility owned by any school district; and

(i) incitement which is intended to and does result in truancy by other pupils.[6]

The terms "suspension" and "explusion" are often used interchangeably, but there is a difference in their meanings. "Suspension" refers to the temporary denial of the student's right to attend school. A suspension is normally imposed by the school principal and is usually of short duration. "Expulsion" refers to the permanent denial of the student's right to attend school and may be imposed only by the local board of education.

The principal may suspend any student from school for good cause, but the suspension must be reported immediately to the district superintendent, who in turn must report the suspension to the district board of education at its next regular meeting.[7] The suspended student may be reinstated by the principal or superintendent prior to the second regular meeting of the board after suspension unless the board has reinstated the student at its first regular meeting after suspension.[8] No suspension may be continued beyond the second regular meeting of the board of education after such suspension unless the board continues it.[9] The power to expel a student from the school system is vested solely in the board of education.[10]

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[6] N.J.S.A. 18A:37-2.

[7] N.J.S.A. 18A:37-4.

A student may appeal a suspension or expulsion decision of the board of education to the Commissioner of Education.[11] Appeal from a decision of the commissioner is to the State Board of Education.[12] Decisions of the state board are reviewable by the courts.[13]

Not too many years ago, the student facing suspension or expulsion from school was afforded little protection from arbitrary action by school officials. Twenty-one years ago one authority made this comment concerning the rights of students threatened with expulsion from the public schools: "It is shocking that the officials of the state educational institution, which can function properly only if our freedoms are preserved, should not understand the elementary principles of fair play. It is equally shocking to find that a court supports them in denying to a student the protection given to a pickpocket."[14]

The expansion of students' rights since the time of this comment has been dramatic. During the past seventeen years, beginning with a landmark decision in *Dixon v. Alabama State Board of Education*,[15] it has been widely recognized that the requirements of procedural due process under the fourteenth amendment of the United States Constitution are applicable with respect to the suspension or expulsion of students from public schools. The *Dixon* case involved the expelling of students from a state college without providing the students with any of the procedural safeguards required by due process. The guidelines stated by the Court in *Dixon* are important and are worth repeating here. The court said:

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[8] N.J.S.A. 18A:37-4.

[9] N.J.S.A. 18A:37-5.

[10] N.J.S.A. 18A:37-5.

[11] N.J.S.A. 18A:6-9.

[12] N.J.S.A. 18A:6-27.

[13] Rules Governing the Courts of the State of New Jersey, 2:2-3.

[14] Seavey, "Dismissal of Students: Due Process," 70 Harv. L. Rev. 1406, 1407 (1957).

[15] 294 F.2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930 (1961).

For the guidance of the parties in the event of further proceedings, we state our views on the nature of the notice and hearings required by due process prior to expulsion from a state college or university. They shall, we think, comply with the following standards. The notice should contain a statement of the specific charges and grounds which, if proper, would justify expulsion under the regulations of the board of education. The nature of the hearing should vary depending upon the circumstances of the particular case. The case before us requires something more than an informal interview with an administrative authority of the college. By its nature, a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charge of misconduct, easily colored by the point of view of the witnesses. In such circumstances, a hearing which gives the board or the administrative authorities of the college an opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved. This is not to imply that a full dress judicial hearing with a right to cross-examine witnesses is required. Such a hearing, with the attending publicity and the disturbance of college activities might be detrimental to the college's educational atmosphere and impractical to carry out. Nevertheless, the rudiments of an adversary proceeding may be preserved without encroaching upon the interests of the college. In the instant case, the student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testified. He should also be given the opportunity to present to the board, or at least to an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf. If the hearing is not before the board directly, the results and findings of the hearing should be presented in a report open to the student's inspection. If these rudimentary elements of fair play are followed in a case of misconduct of this particular type, we feel that the requirements of due process of law will have been fulfilled.[16]

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[16] 294 F.2d at 158-159.

These guidelines were quoted as setting forth the minimum requirements for a suspension hearing in a 1970 New Jersey case.[17] That case involved a high school student who was given neither a preliminary hearing nor a full hearing before he was suspended from school. The court held that the New Jersey statutes relating to suspension and expulsion must be construed so as "to afford students facing disciplinary action involving the possible imposition of serious sanctions, such as suspension or expulsion, the procedural due process guaranteed by the fourteenth amendment."[18] The court went on to say that when school authorities have reasonable cause to believe that a student presents a danger to himself, to others or to school property, they may temporarily suspend the student for a short period of time pending a full hearing which will afford the student procedural due process. Under ordinary circumstances, however, the student must be afforded a preliminary hearing before he may be suspended.[19] The preliminary hearing may be completely informal, but the full hearing "clearly depends upon the the circumstances of the case."[20] At a minimum, the student must be afforded the procedural rights as mandated by *Dixon*.[21] In no case, the court held, should the full due process hearing take place more than 21 days from the date of the suspension.[22]

A 1971 case which was decided by the state's highest court held that in a suspension or expulsion hearing before the local board of education, the accused student always has the right to demand that his accusers appear in person to answer questions.[23] This right of confrontation exists even if the penalty to be imposed is less than expulsion or a severe term of suspension.[24]

The issue of students' rights in suspension procedures reached the United States Supreme Court in 1975. In *Goss*

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[17] **R.R. v. Board of Education, Shore Regional High School,** 109 N.J. Super. 337 (Ch. Div. 1970).

[18] **Id.** at 347.

[19] **Id.**

[20] **Id.** at 348.

[21] **Id.** at 350.

[22] **Id.**

[23] **Tibbs v. Board of Education of the Township of Franklin, Somerset County,** 114 N.J. Super. 287 (App. Div. 1971), affirmed 59 N.J. 506 (1971).

[24] 114 N.J. Super. at 302.

v. Lopez[25] the Supreme Court announced the minimum procedural requirements of the due process clause of the fourteenth amendment. The Court held that for short-term suspensions, a student must be given "oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story."[26] It must be stressed that these minimum requirements apply only in cases where the suspension is for ten days or less. The Court stated: "Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. Nor do we put aside the possibility that in unusual situations, although involving only a short suspension, something more than the rudimentary procedures will be required."[27]

The informal notice and hearing required under *Goss* should generally precede the removal of the student from school. The Court, however, recognized that in cases where the student poses a danger to persons or property, or where he/she presents "an ongoing threat of disrupting the academic process," such student may be immediately removed from school.[28] In these cases, the school authorities should satisfy the notice and hearing requirement "as soon as practicable."[29]

The Supreme Court further stated that under the due process clause students do not have a right to the assistance of counsel in connection with short term suspension hearings. Nor do students have the right to confront adverse witnesses or to call their own witnesses. The school disciplinarian, however, has the discretion to permit the participation of counsel and the confrontation of witnesses in order to make a better-informed decision.[30]

From the cases discussed above, and from the pertinent statutes, some conclusions may be drawn concerning suspensions and expulsions:

(1) New Jersey statutes relating to suspension and ex-

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[25] 419 U.S. 565 (1975).

[26] **Goss v. Lopez,** 419 U.S. 565,581 (1975).

[27] **Id.** at 584.

[28] **Id.** at 582.

[29] **Id.** at 583.

[30] **Id.** at 584.

pulsion must be construed to require public school officials to afford students facing serious disciplinary action the procedural due process guaranteed by the fourteenth amendment.

(2) A principal has the power to suspend a student for a period of ten days or less following an informal hearing where the student is apprised of the charges against him and is given an opportunity to present a defense. (Such hearing may follow suspension in emergency situations.)

(3) Where the suspension is for more than ten days, or where a short suspension involves an "unusual situation," the student must be afforded both a preliminary and a full hearing. The preliminary hearing should conform to the requirements set forth in paragraph 2 above. The full hearing should conform to the requirements set forth in paragraph 5 below.

(4) Under no circumstances may a suspension by a principal be continued beyond the second regular meeting of the board of education, unless the board so continues the suspension, and only the local board of education has the power to expel a student.

(5) A full due process hearing, whether before the principal in a suspension matter or before the board in a continuation of a suspension matter or an expulsion matter, necessarily includes the accused student's right to:
  (a) notification of the charges against him;
  (b) the names of the adverse witnesses;
  (c) copies of the statements and affidavits of those adverse witnesses;
  (d) the opportunity to be heard in his own defense;
  (e) the opportunity to present witnesses and evidence in his own defense;
  (f) the opportunity to cross-examine adverse witnesses; and
  (g) the opportunity to be represented by counsel.

More important, perhaps, than questions relating to procedural due process are considerations relating to the appropriateness and effectiveness of suspension and expulsion as approaches to student discipline. The Commissioner of

Education recognized the importance of these considerations in a decision in which he said:

> *Termination of a pupil's right to attend the public schools of a district is a drastic and desperate remedy which should be employed only when no other course is possible . . . . It is obvious that a board of education cannot wash its hands of a problem by recourse to expulsion. While such an act may resolve an immediate problem for the school it may likewise create a host of others involving not only the pupil but the community and society at large. The Commissioner suggests, therefore, that boards of education who are forced to take expulsion action cannot shrug off responsibility but should make every effort to see that the child comes under the aegis of another agency able to deal with the problem. The Commissioner urges boards of education, therefore, to recognize expulsion as a negative and defeatist kind of last-ditch expedient resorted to only after and based upon competent professional evaluation and recommendation.*[31]

B. Use of Grades For Disciplinary Purposes

Marks and grades may not be used to serve disciplinary purposes. Their use for such purposes has been forbidden by the Commissioner of Education as usually ineffective in producing the desired result and educationally indefensible. As the commissioner has observed, whatever system of marks and grades a school may devise will have serious limitations at best and it must not be further handicapped by attempting to use it to serve disciplinary purposes.[32]

Every legitimate suspension, of course, affects grades to some extent because classtime is lost and the absence from class ordinarily tends to reduce grades. This does not mean that all suspensions are illegal. Legitimate suspensions may be employed but the commissioner has held that in those instances where a student has missed an examination because of suspension from classes, the student should be given the opportunity to take a make-up examination and his grade should be computed as if he had taken the examination at the usual time.[33]

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[31] **Scher v. Board of Education, West Orange**, 1968 S.L.D. 92

[32] **Wermuth v. Board of Education of the Township of Livingston**, 1965 S.L.D. 121

C. Corporal Punishment

A board of education may make no rules or regulations permitting corporal punishment of students, and no person employed by the board may inflict corporal punishment upon a student.

A board employee may, within the scope of his duties, use such force as is reasonable and necessary:

(1) to quell a disturbance which threatens physical injury to others;
(2) to obtain possession of weapons or other dangerous objects which a student has in his control;
(3) for the purpose of self defense; and
(4) for the protection of persons or property.

Such acts do not constitute corporal punishment.[34]

D. Freedom of Speech

1. Symbolic Expression of Opinion

Students have a constitutional right of freedom of speech and expression which protects them even while in attendance at school. In order for a board of education to justify the prohibition of a particular symbolic expression of opinion, such as the wearing of armbands or buttons, it must be able to show that the prohibition was caused by something more than a mere desire to avoid the discomfort and unpleasantness that accompany unpopular viewpoints. Where there is no showing that the exercise of the particular form of symbolic expression would materially and substantially interfere with the requirements of appropriate discipline in the operation of the schools, the prohibition cannot be sustained.[35]

2. Distribution of Literature

The Commissioner of Education has held that a board of education has the authority to develop reasonable regulations, consistent with constitutional safeguards, governing the time, place and manner of the distribution of published materials by pupils on school property, together with guidelines or criteria which will serve to protect the legitimate concerns of school administrators for the orderly operation of the educational program.

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[33] **Haddad v. Board of Education of the Township of Cranford,** 1968 S.L.D. 98; **Minorics v. Board of Education of the Town of Phillipsburg,** 1972 S.L.D. 86.

[34] N.J.S.A. 18A:6-1.

[35] **Tinker v. Des Moines Independent School District,** 393 U.S. 503 (1969).

In a case involving the distribution of leaflets by high school students, the commissioner stated in 1969:

> *There is a common sense middle ground between the extremes of total proscription and absolute liberty which represents a sound approach to a solution of this problem. Such a plan would not provide an outright ban of all leaflet distribution but would seek to accommodate the maximum degree of freedom of expression by means consistent with the good order of the school. Guidelines for such purpose, cooperatively developed by pupils and faculty, would define the times and places when materials could be distributed without interfering with the work of the school. They would also include criteria by which the appropriateness of the material to be handed out can be judged....But such guidelines and the criteria to implement them need not constitute a censorship procedure. Certainly some decision-making is called for to determine the suitability of materials to be passed out to pupils in the schools. Suitability in this context should not be read to mean only non-controversial, popular, majority point of view expressions of opinion, but might well include materials representing many kinds of opinions on a variety of subjects. It is beyond argument, however, that so called "hate literature" which scurrilously attacks ethnic, religious and racial groups, other irresponsible publications aimed at creating hostility and violence, hard-core pornography, and similar materials are not suitable for distribution in the schools. Such materials can be banned without restricting other kinds of leaflets by the application of carefully designed criteria for making such judgments. In the Commissioner's opinion, such a program does not constitute the kind of prior censorship which suppresses freedom of expression but represents, instead, the kind of accommodation which*

> *can be made in order to achieve the maximum degree of liberty consistent with the preservation of good order.*[36]

While retaining jurisdiction, the commissioner remanded the case to the local board for the development of guidelines. A student-staff committee prepared a set of guidelines which were subsequently approved, with the exception of one provision, by the commissioner.[37] However, the students who had been suspended for leafleting then appealed to the Appellate Division which affirmed the decision of the commissioner.[38] The students finally appealed to the New Jersey Supreme Court which in 1975 held, over a vigorous dissent by Justice Clifford, that the case was moot since the students had graduated.[39] Thus, the constitutionality of the regulations adopted by the local board, and of the guidelines announced by the commissioner in 1969 (quoted above) was never addressed by the Court.

Justice Clifford's dissent in the *Oxfeld* case should be carefully considered, however, since he did reach the merits and discussed the applicable law in detail. Clifford argued that the court should reach a decision rather than vacate the case on grounds of mootness, since it presented issues of great importance. He noted that one of the regulations adopted by the board and approved by the commissioner required prior approval by the school principal of all materials which students desired to distribute. Such prior approval constituted an impermissible "prior restraint" on the students' first amendment right of free speech.[40] Clifford argued that such "prior restraints" on speech have been held valid by the United States Supreme Court only when the speech creates a clear and present danger of disruption. Thus, any system requiring prior approval of *all* materials intended to be distributed by students is unconstitutional.[41]

Clifford's reasoning and analysis of the first amendment rights of students is supported by numerous cases in jurisdictions other than New Jersey.[42] In fact, should a similar case be presented again to the New Jersey Supreme Court where the issue is not moot, the weight of authority suggests that Clifford's views would prevail, and that restraints on distribution of student literature will be subjected to strict judicial scrutiny. While the courts have indicated that some narrowly drawn restraints will be upheld, the board bears a heavy burden in justifying their legality.

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[36] **Goodman v. Board of Education of South Orange-Maplewood,** 1969 S.L.D. 88, 96-7.

[37] **Goodman v. Board of Education of South Orange-Maplewood,** 1971 S.L.D. 106.

[38] **Oxfeld v. Board of Education of South Orange-Maplewood,** 1973 S.L.D. 779.

[39] **Oxfeld v. New Jersey State Bd. of Ed.,** 68 N.J. 301 (1975).

[40] **Oxfeld v. New Jersey State Bd. of Ed.,** 68 N.J. 301, 322 (1975) (dissenting opinion).

[41] **Id.** at 317.

A policy which would restrict publication and circulation on school property to literature prepared under school sponsorship and supervision is an unlawful and improper restraint upon students' rights of free expression.[43]

E. Hair Length and Dress Codes

> *Conventions change the time, and the conventional hair styles of today are shallow reasons for denying otherwise eligible students from participation in any school programs.*[44]

Boards of education and school administrators have the right to adopt and enforce rules governing student dress, but these rules must have a rational and substantial relationship to some legitimate purpose, such as the protection of health and safety or the maintenance of order in the educational process.[45]

As the commissioner has observed in a case involving such a dress code:

> *It can hardly be disputed that school authorities are vested with the power to regulate pupil appearance in instances where it is, or threatens to become so extreme*

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[42] See **Nitzberg v. Parks,** 525 F.2d 378 (4th Cir. 1975); **Jacobs v. Board of School Commissioners, Indianapolis,** 490 F. 2d 601 (7th Cir. 1973), vacated as moot, 420 U.S. 128 (1975); **Fujishima v. Board of Education,** 460 F. 2d 1355 (7th Cir. 1972); **Riseman v. School Commission of the City of Quincy,** 439 F. 2d 148 (1st Cir. 1971); **Butts v. Dallas Independent School District,** 436 F. 2d 728 (5th Cir. 1971); **Hernandez v. Hansen,** 430 F. Supp. 1154 (D. Neb. 1977); **Leibner v. Sharbough,** 429 F. Supp. 744 (E.D. Va. 1977); **Pliscou v. Holtville Unified School District,** 411 F. Supp. 842 (S.D. Cal. 1976); **Trachtman v. Anker,** 426 F. Supp. 198 (S.D. N.Y. 1976); **Vail v. Board of Education,** 354 F. Supp. 592 (D.N.H. 1973); **Poxon v. Board of Education,** 341 F. Supp. 256 (E.D. Cal. 1971); **Zucker v. Panitz,** 299 F. Supp. 102 (S.D. N.Y. 1969).

[43] **Burke v. Board of Education of the Township of Livingston,** 1970 S.L.D. 319.

[44] **Harris v. Board of Education of the Township of Teaneck,** 1970 S.L.D. 311, 316.

[45] **Pelletreau v. Board of Education of the Borough of New Milford,** 1967 S.L.D. 45, reversing 1967 S.L.D. 35; **Bertin v. Boyle,** 1968 S.L.D. 24; **Sylvester v. Board of Education of the Watchung Hills Regional High School,** 1969 S.L.D. 67; **Singer v. Board of Education of the Borough of Collingswood,** 1971 S.L.D. 594.

> *as to be the obvious cause of indiscipline and disruption of the school program. Boards of education and their staffs have a responsibility by statutory mandate to provide and maintain conditions under which learning can take place most effectively. The power to adopt rules and regulations having as their purpose the creation of an optimum climate for learning and the elimination of distracting or disruptive elements is an entirely proper and necessary adjunct of that responsibility. To hold otherwise would be to render the school officials powerless to prevent flagrant individual abuses, under the guise of personal freedom which could adversely affect the welfare of the group and invade the rights of those who want an education.*[46]

In this same case, which involved in particular that part of the dress code forbidding long hair, the State Board of Education made the following comment:

> *We recognize that students live most of their lives outside the walls of their schools. During their out-of-school hours, they are subject to the discipline of their parents and must abide by the laws of the community. A school regulation forbidding long hair in effect regulates outside of school conduct. It is not possible to have short hair in school and revert to longer hair at home. A regulation relating to dress does not have this effect. A student may well comply with regulations as to what may or may not be worn during school hours and dress as he or his parents sees fit during his non-school hours.*
>
> *Historically, students have been innovators. So long as it does not interfere with the process of education, it is healthy and heartening that they now and again test the mores of their elders. While most of the rule promulgators and decision writers of 1967 wear their hair cropped comparatively close to the scalp, history has seen the day when the legislators and judges habitually adorned themselves with natural or artificial locks of near shoulder lengths. Who is to say that this day is not to return?*[47]

The state board then came to the conclusion that the portion of the school regulations forbidding long hair was invalid. It was not convinced that the rule had a substantial relationship to a legitimate purpose. It could not conceive that the threat to school discipline was sufficiently great to justify interference with the "relatively harmless experimentation of students in the field of hair styling."[48]

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[46] **Pelletreau, supra,** 1967 S.L.D. at 40-41.

[47] **Pelletreau, supra,** 1967 S.L.D. at 48.

The commissioner has held that the opportunity to try out for a school team or to participate in other extracurricular activities must be open to all and selection for participation must be based on talent and potential contribution to the team or activity. The reasonable limits of any rules of eligibility should not include regulations on hair style and length, which are matters of personal taste, unless it can be shown that such styles create disorder, present a clear and present danger to that student or his fellow participants or are detrimental to good health and hygiene.[49]

F. Student Records

In 1975, the state board adopted regulations regarding pupil records in order to comply with the federal Family Educational Rights and Privacy Act of 1974.[50] Pupil records are broadly defined to include any information gathered within or without the school system and maintained within the school system, regardless of the physical form in which it is maintained. Any information maintained for the purpose of second party review is considered a pupil record. Thus, information recorded by school personnel solely as a memory aid, not for the use of a second party, is not considered a pupil record.[51]

The rules of the state board on access to pupil records provide that the following persons and organizations shall have the right to view, make notes and/or have a reproduction made of a pupil record:

(1) A parent or legal guardian of a pupil under the age of 18;

(2) Pupils under 18 having the written permission of parent or guardian;

(3) Pupils at least 16 years of age who are terminating

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[48] **Id.**

[49] **Harris, supra; Bramwell v. Board of Education of the Township of Franklin, Somerset County,** 1970 S.L.D. 331, affirmed by State Board 1971 S.L.D. 662.

[50] Title IV of Public Law 90-247, as amended.

[51] N.J.A.C. 6:3-2.1.

their education by graduating at the end of the term or plan to discontinue their education;

(4) Adult pupils (18 years of age and older);

(5) Parents or guardians of adult pupils
  (a) where they have the written permission of the pupil or
  (b) where the pupil is financially dependent on them;

(6) Certified school personnel who have assigned educational responsibility for the pupil;

(7) Accrediting organizations, the Department of Education and officials of other school districts in which the student is registered or intends to enroll;

(8) A state agency investigating the need for protective services or supervision and organizations or persons on presentation of a court order;

(9) Organizations and persons outside the school with the written consent of the parent or adult pupil;

(10) Bona fide researchers under strict conditions of anonymity and confidentiality.[52]

It is important to note that there is no similar right to view those records alluded to above which are excluded from the definition of "pupil records" in the New Jersey regulations.

A record may be withheld from an authorized parent or pupil only when the chief school administrator is convinced that disclosure would create a substantial risk of harm to the pupil or to a person with whom the record is concerned.[53] Pupil records are subject to challenge by parents or adult pupils on grounds of inaccuracy, irrelevancy, impermissive disclosure or denial of access, and appeal may be had to the board of education or to the commissioner.[54]

The chief school administrator or a designee shall be present during inspection to provide interpretation where necessary and to prevent record alteration, damage or loss.[55]

G. Searches of Students

The fourth amendment protects all citizens from unreasonable searches and seizures by government officials; however, this does not mean that student lockers cannot be searched by school officials. There are no New Jersey decisions directly on point but New York's highest court has ruled that a school official has the authority to consent to a police search of a student's locker:

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[52] N.J.A.C. 6:3-2.5.

[53] N.J.A.C. 6:3-2.6.

[54] N.J.A.C. 6:3-2.7.

[55] N.J.A.C. 6:3-2.6.

> *The power . . . to give his consent to this search arises out of the distinct relationship between school authorities and students. The school authorities have an obligation to maintain discipline over the students. It is recognized that, when large numbers of teenagers are gathered together in such an environment, their inexperience and lack of mature judgment can often create hazards to each other. Parents, who surrender their children to this type of environment, in order that they may continue developing both intellectually and socially, have a right to expect certain safeguards.... Indeed, it is doubtful if a school would be properly discharging its duty of supervision over the students, if it failed to retain control over the lockers . . . Not only have the school authorities a right to inspect, but this right becomes a duty when suspicion arises that something of an illegal nature may be secreted there . . . .*[56]

The law relating to the search of a student's person is not as well-settled as that relating to lockers. A reported New Jersey juvenile court case held that the responsibility of school discipline outweighed the defendant's privacy rights when the officials had a "reasonable suspicion" that defendant was in possession of illegal drugs.[57] This "reasonable suspicion" was based on two facts: (1) the principal had received a telephone call stating that the defendant had been selling drugs in the restroom, and (2) a student informed a teacher that the defendant had a jar of white pills and was trying to sell them to other students. The court held that the search of defendant's person was a proper exercise of the *in loco parentis* authority of the school officials.

However, a federal district court in Illinois held that the plaintiff students' constitutional rights had been violated when the defendant school officials searched their persons for drugs.[58] The officials based their search on a telephone call to the principal which led him to suspect that the students possessed drugs. Of critical importance in the court's decision was the fact that there was police involvement before and during the search of the students. Thus, the court applied a strict standard of probable cause against the school officials rather than the more relaxed standard of balancing the students' rights against the need to maintain order within the school.

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[56] **People v. Overton,** 24 N.Y. 2d 522, 249 N.E. 2d 366 (1967); see also **State v. Stein,** 203 Kan. 638, 456 Pac. 2d 1 (1969), **cert.** denied 397 U.S. 947 (1969); **In re W.,** 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (Ct. App. 1973).

[57] **State in the Interest of G.C.,** 121 N.J. Super. 108 (J. & D.R. Ct. 1972).

It is apparent from a review of these and other cases that the law regarding searches of students' persons is not yet well-settled. Decisions turn on the particular facts and circumstances in each case. If the evidence sought could lead to a criminal prosecution, administrators would be well-advised to contact the local police rather than conduct a search of the student's person themselves. Close consultation with the board attorney is strongly recommended.

H. Secret Fraternities

Every fraternity, sorority or secret society or organization which is composed in whole or in part of public school students and which seeks to organize itself by taking in student members upon the basis of decision of the membership of the organization rather than from the free choice of any students who are otherwise qualified to fill the special aims of the organization, has been declared by law to be inimical to the good of the school system and to the democratic principles and ideals of public education and the public good.[59]

No such fraternity, sorority or secret organization may be formed or maintained in any public high school, and the board of education of every district must adopt rules providing for the necessary disciplinary measures to enforce this prohibition.[60]

The prohibition does not apply to any state college.[61]

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[58] **Picha v. Wielgos,** 410 F. Supp. 1214 (N.D. Ill. 1976).

[59] N.J.S.A. 18A:42-5.

[60] N.J.S.A. 18A:46-6; **Milligan v. Board of Education of Manchester Regional High School District,** 1961-62 S.L.D. 197; **Angelillo v. Board of Education of Manchester Regional High School District,** 1964 S.L.D. 74.

[61] N.J.S.A. 18A:42-6.

I. Flag Salute and Pledge of Allegiance

Every board of education must require the students in each school in the district on every school day to salute the United States flag and repeat the pledge of allegiance to the flag.

A New Jersey statute provides that students who have conscientious scruples against the pledge or the salute, or who are children of accredited representatives of foreign governments to whom the United States government extends diplomatic immunity, cannot be required to salute or pledge allegiance but shall be required to show full respect to the flag while the pledge is being given by standing at attention, the boys removing the headdress.[62] However, a New Jersey federal district court has held that the requirement that such students stand at attention during the pledge is unconstitutional but that such students can be required to sit quietly throughout the pledge.[63]

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[62] N.J.S.A. 18A:36-3.

[63] **Lipp v. Morris,** Civil No. 77-1057 (D.N.J. decided September 1, 1977), appeal docketed No. 77-2435, 3d Cir., Nov. 15, 1977; see also, **Goetz v. Ansell,** 477 F. 2d 636 (2d Cir. 1973), **Banks v. Board of Public Instruction of Dade County,** 314 F. Supp. 285 (S.D. Fla. 1970), aff'd 450 F. 2d 1103 (5th Cir. 1971).

Chapter VII

The Management of the Schools

A comparison of the statutory powers of a local board of education[1] with those of certain specific school officials[2] reveals an unmistakable legislative design to place the policy-making responsibility on the former, and executive responsibility on the latter. The parceling of duties to the school district's top managers is basically made from a functional viewpoint in the statutes, and local boards are left with the responsibility of filling out the details of the interrelationship among its key employees. Local boards are also left with the responsibility of specifying the obligations of their so-called middle-echelon managers, such as building principals, since the statutes, other than for an occasional functional mandate, are silent as to them. It is clear that the legislative scheme leaves much to the discretion of the local board, which would be remiss in not providing guidance to its management team.

A. The Superintendent of Schools

Perhaps the most important duty any board performs is the selection and appointment of a capable superintendent for the school system. The laws relating to the superintendent of schools state that the board of education, in all Type I districts and Type II districts in which the position has been established, may appoint a superintendent of schools for a term not exceeding five years by a recorded roll call vote of the full membership.[3]

A board may require a superintendent to devote himself exclusively to the duties of his office.[4] The superintendent has a seat on the board and the right to speak on all educational matters at meetings of the board, but not the right to vote.[5] Statutes give the superintendent general supervision over the schools, and he must report thereon as directed by the board. He has such other powers and performs such other duties as the board may prescribe.[6]

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[1] N.J.S.A. 18A:11-1,2. See Chapters III and VII herein.

[2] As hereinafter described.

[3] N.J.S.A. 18A:17-15.

[4] N.J.S.A. 18A:17-18.

Among the duties of local superintendents listed in the rules of the state board, a superintendent is required to visit the schools under his jurisdiction and examine into their condition and progress, to recommend lists of textbooks, reference and library books, materials of instruction, equipment and supplies, and to ascertain if teachers are properly certified.[7] The superintendent is specifically made responsible for supervising and advising principals and teachers in procedures, methods and materials of instruction, and for the discipline and conduct of the schools.[8] Finally, he has an express mandate to "exercise such educational and administrative leadership, supervision and guidance as may be necessary for producing the best possible educational conditions and outcome."[9]

The superintendent may appoint and, subject to tenure status, may remove the clerks in his office, but their number and salaries are determined by the board.[10] On or before August 1 the superintendent must report annually to the commissioner in prescribed form.[11]

Upon the superintendent's nomination, the board, by a recorded roll call majority vote of the full membership, may appoint assistant superintendents and fix their salaries. They may be removed by a like vote, subject to tenure status.[12] Each assistant superintendent performs such duties as are prescribed by the superintendent with the approval of the board.[13]

The superintendent may, with the approval of the president, suspend any assistant superintendent, principal or teaching staff member, and must report such suspension to the board, after which the board may take, by majority vote of all members, whatever action it may deem proper, subject to tenure laws.[14]

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[5] N.J.S.A. 18A:17-20.

[6] N.J.S.A. 18A:17-20.

[7] N.J.A.C. 6:3-1.12 (a), (f), (g).

[8] N.J.A.C. 6:3-1.12 (b).

[9] N.J.A.C. 6:3-1.12 (c)

[10] N.J.S.A. 18A:17-24.

[11] N.J.S.A. 18A:17-21.

[12] N.J.S.A. 18A:17-16, 19.

[13] N.J.S.A. 18A:17-22.

A Type II district in which the position of superintendent has not been established may make application therefor to the county superintendent. If the application is approved in writing by the county superintendent and is approved by the commissioner and the state board, the board of education may thereafter appoint a superintendent.[15] State board rules require a district to have at least 25 full-time teachers to secure approval.[16] Boards of two or more districts may make joint application for a superintendency and, if approved, may unite in employing a superintendent. In such cases, the superintendent is appointed by the commissioner with approval of the state board.[17]

No person may be appointed, or act as, or perform the duties of superintendent or assistant superintendent unless he holds an appropriate certificate.[18]

B. The Board Secretary

Every board of education must have a secretary to perform the duties and functions assigned to him by law and which only he can perform. The secretary is appointed by a majority roll call vote of the full membership of the board for a term to expire not later than June 30 of the calendar year next succeeding that in which the board was organized. His compensation is fixed by the board. A board member may be appointed secretary but without compensation while holding both offices.[19] A vacancy in the office of the secretary must be filled by the board within 60 days or, if not, the county superintendent appoints a secretary.[20] The secretary must be bonded in an amount not less than $2,000 and with surety approved by the board. The board may pay the premium.[21]

It is the secretary's duty to notify board members of all meetings, to post and give notices of all school elections, and to record all proceedings of the board and of school elections in suitable minute books.[22] As general accountant of the board, the secretary is required to:

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[14] N.J.S.A. 18A:25-6.
[15] N.J.S.A. 18A:17-15.
[16] N.J.A.C. 6:3-1.11.
[17] N.J.S.A. 18A:17-15.
[18] N.J.S.A. 18A:17-17.
[19] N.J.S.A. 18A:17-5.
[20] N.J.S.A. 18A:17-5.
[21] N.J.S.A. 18A:17-6.

(a) collect tuition fees and other moneys due the board and transmit them to the custodian of school moneys;[23]
(b) examine and audit all accounts and demands against the board, present them to the board at its meetings, indicate the board's approval and send them to the custodian for payment;[24]
(c) keep accounts of the school district's financial transactions including a correct detailed account of all expenditures;[25]
(d) report to the board at each regular meeting the amount of the total appropriations and cash receipts for each account, the amount of warrants drawn against each account, and the amount of orders or contractural obligations incurred and chargeable against each account;[26]
(e) keep all contracts, records and documents belonging to the board;[27]
(f) give the board a detailed report of its financial transactions at the close of each fiscal year and file a copy with the county superintendent;[28]
(g) report to the commissioner annually the amount of unpaid school debt, the interest rate payable, the dates of issue and the due dates of bonds or other indebtedness;[29]
(h) prepare a summary of the annual audit and recommendations prior to the meeting of the board to act thereon and make copies of the summary available to interested persons.[30]

The secretary is authorized to administer oaths relevant to school matters, without charge.[31]

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[22] N.J.S.A. 18A:17-7.
[23] N.J.S.A. 18A:17-8.
[24] N.J.S.A. 18A:17-8; N.J.S.A. 18A:19-4.
[25] N.J.S.A. 18A:17-8.
[26] N.J.S.A. 18A:17-9.
[27] N.J.S.A. 18A:17-9.
[28] N.J.S.A. 18A:17-10.
[29] N.J.S.A. 18A:17-12.
[30] N.J.S.A. 18A:23-4.

The secretary in a Type I district may appoint and remove, subject to tenure, clerks in his office to the number and at salaries as set by the board.[32]

When authorized by the board, the secretary may make purchases or negotiate and award contracts for services or supplies where the annual cost of such services or supplies does not exceed $2,500.[33]

The secretary has important responsibilities in preparing for school elections. He:

(a) receives all petitions nominating candidates for board membership;[34]

(b) notifies the candidate when a defective nominating petition is filed and permits its amendment, except as to the number of signatures, before ballots are printed;[35]

(c) withdraws the name of any nominee who so requests any time before 4 p.m. on the 32nd day before the election;[36]

(d) conducts a drawing for position of candidates on the ballot at 8 p.m. on the day following the close of nominations;[37]

(e) receives nominations of challengers and issues certificates of appointment to challengers;[38]

(f) gives notice of all elections by posting at least seven public notices ten days prior to the election and by newspaper notice;[39]

(g) furnishes each polling place with proper equipment in ample time for the election;[40]

(h) publishes notices of the election for absentee voters, and receives the canvass of the absentee votes and adds them to the tally at the polls;[41]

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[31] N.J.S.A. 18A:17-11.
[32] N.J.S.A. 18A:17-14.
[33] N.J.S.A. 18A:18A-3.
[34] N.J.S.A. 18A:14-9.
[35] N.J.S.A. 18A:14-12.
[36] N.J.S.A. 18A:14-12.1.
[37] N.J.S.A. 18A:14-13.
[38] N.J.S.A. 18A:14-15, 16.
[39] N.J.S.A. 18A:14-19.
[40] N.J.S.A. 18A:14-20.
[41] N.J.S.A. 18A:14-25, 26, 27, 28.

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(i) prepares sample ballots, mails them to each registered voter, and posts them in each polling place when directed by resolution of the board to do so;[42]

(j) prepares official ballots and furnishes them to the election officials, if paper ballots are used;[43]

(k) notifies the appropriate county official, when the board determines to use voting machines, of the number of machines to be used, the location of the polling places and the hours they will be open at least 40 days before the election; furnishes, at least seven days before the election, official ballots to be used in the machines; and makes such other arrangements as are necessary to hold the election by use of voting machines;[44]

(l) declares the polls open at the appropriate time, in the absence of a member of the board of education or the judge of the election;[45]

(m) gives written notice to the county registration commissioner at least 10 days before the election, of the election districts in the school district; receives from him the signature copy registers, delivers them to the election board at each polling place, and returns them to the registration commissioner the day after the election;[46]

(n) receives the report of the election and the sealed package of ballots, poll list and tally sheets from each polling place; adds the votes cast by absentee ballot as certified by the county board of election; combines the reports from all polling places and announces the result; certifies the accuracy of the count as required;[47]

(o) forwards the sealed election packages and statement of results to the county superintendent within five days of the election;[48]

(p) performs any duties, not in conflict with those imposed upon any other officer by law, necessary for the proper conduct of a school election.[49]

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[42] N.J.S.A. 18A:14-29, 30, 31.

[43] N.J.S.A. 18A:4-32.

[44] N.J.S.A. 18A:14-40, 41.

[45] N.J.S.A. 18A:14-46.

[46] N.J.S.A. 18A:14-47.

[47] N.J.S.A. 18A:14-61.

[48] N.J.S.A. 18A:14-62.

In districts having a board of school estimate, he serves as secretary of such board without additional compensation.[50] The board may appoint, by a recorded roll call majority vote of all members, an assistant secretary to assist the secretary and to serve in his stead during the absence or inability of the secretary to act.[51] In an apparent legislative oversight the statute permitting board members to serve as assistant secretary does not expressly prohibit compensation being paid for such service. However, such a prohibition can easily be inferred from legislative history and conflict of interest law.[52]

C. School Business Officials

1. In Type I Districts – the Business Manager

A business manager may be appointed in any Type I school district and, subject to tenure status, may be removed by a majority vote of all members.[53] The business manager has a seat on the board and the right to speak on all matters pertaining to his functions but no right to vote.[54] The business manager must be bonded in an amount not less than $2,000 and with surety approved by the board. The premium may be paid by the board as a current expense.[55]

It is the duty of the business manager to:

(a) have charge and care of the school buildings and property of the district and their repair and maintenance;[56]

(b) order repairs not exceeding $2,500 when so authorized by the board between board meetings without previous order or advertisement;[57]

(c) draw or supervise the drawing of all plans and specifications for the erection, improvement or repair of the school buildings, subject to board approval;[58]

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[49] N.J.S.A. 18A:14-63.

[50] N.J.S.A. 18A:22-2; 18A:22-6.

[51] N.J.S.A. 18A:17-13.

[52] N.J.S.A. 18A:12-2.

[53] N.J.S.A. 18A:17-25.

[54] N.J.S.A. 18A:17-27.

[55] N.J.S.A. 18A:17-26.

[56] N.J.S.A. 18A:17-28a.

[57] N.J.S.A. 18A:17-28a; N.J.S.A. 18A:18A-3.

(d) superintend all advertisements for bids in the letting of contracts for the board;[59]

(e) supervise the construction and repair of all school buildings, inspect all work done and materials furnished and, subject to board approval, condemn or reject work or materials which do not conform to specifications;[60]

(f) report monthly to the board progress on construction or repair work;[61]

(g) perform other duties as may be required by the board.[62]

2. In Type II Districts – The School Business Administrator

The board may delegate to any appropriate officer employed by the board, the duties and powers of a business manager listed above.[64]

However, in Type II districts with 25 or more full-time teachers the board may seek to establish the position of school business administrator.[65] If the county superintendent agrees to the necessity for the position and the commissioner and state board approve, a board or the boards of two or more districts, may appoint a school business administrator, define his duties and fix his salary. One of his assigned duties may be to serve as secretary to the board.[66]

The school business administrator must hold an appropriate certificate. He is considered a member of the professional staff.[67] It must be noted that a board secretary or business manager who has acquired tenure in the district and is appointed school business administrator continues to hold that tenure while in the new position.[68]

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[58] N.J.S.A. 18A:17-28b.
[59] N.J.S.A. 18A:17-28c.
[60] N.J.S.A. 18A:17-28d.
[61] N.J.S.A. 18A:17-28e.
[62] N.J.S.A. 18A:17-28f.
[63] N.J.S.A. 18A:17-29.
[64] N.J.S.A. 18A:16-1.2.
[65] N.J.A.C. 6:3-1.18.
[66] N.J.S.A. 18A:17-14.1.
[67] N.J.S.A. 18A:17-14.2.
[68] N.J.S.A. 18A:17-14.3.

The following are major areas of the duties and responsibilities which may be considered by the board of education as functions of the school business administrator in cooperation with all members of the staff having related administrative responsibilities:

(a) assist in the planning and preparation of the annual budget, as well as long-term planning in terms of community resources and needs;

(b) be responsible for all purchasing in accordance with the law and school board policy;

(c) work with other administrators, architects, attorneys and financial advisors in planning construction, contracting and in acquiring suitable financing;

(d) in cooperation with administrators and the board of education, help interpret the budget and other pertinent areas of school business operations;

(e) recruit personnel for positions in the area of school business management;

(f) direct programs of in-service training to improve skills of school business management personnel;

(g) in cooperation with other administrators, assume the responsibility for the supervision of maintenance and operation of facilities;

(h) be responsible for the operation and maintenance of district-owned buses or handle the business aspects of contracted transportation services;

(i) be responsible for the business operation of school food services and the efficient business management of the school lunch program;

(j) supervise the accounting system necessary to provide the board of education and administrators with accurate financial reports in all areas except those delegated by statutes to the secretary of the board of education;

(k) have general responsibility for the operation of the insurance program.[69]

D. The Custodian of School Moneys

The custodian of the moneys of the municipality is by reason of such office the custodian of school moneys of the school district unless the board of education designates the municipal tax collector to perform this duty. If both the custodian of moneys of the municipality and the municipal tax collector submit written notifications to the board that they do not wish to serve as custodian of school moneys, the board shall appoint any other suitable person, except a member or employee of the board, with a term of office fixed by the board.[70] In a regional or consolidated district, the board may appoint a suitable person, who may be a member of the board, as custodian of school moneys.[71] In school districts containing more than one municipality, the custodian of moneys of the municipality having the largest amount of taxable property is custodian of school moneys unless and until the board appoints any other suitable person except a member or employee of the board.[72]

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[69] N.J.A.C. 6:3-1.18(a) (2).

If the bond given by the custodian for the faithful performance of his municipal duties is sufficient and is certified to cover his school duties, no additional bond is required. If otherwise, the custodian must give additional bond to secure performance of his school duties. In determining the amount of coverage the board must be guided by a schedule of minimum limits set by the state board.[73] The board determines the compensation to be paid the custodian.[74]

It is the duty of the custodian to:

(a) receive and hold in trust all school moneys, except funds from school athletic events and pupil organization activities, and deposit them in the banks designated by the board;[75]

(b) pay out school moneys only on warrants made payable to the person entitled to receive payment and specifying the object for which it is issued and signed by the president and secretary of the board and the custodian;[76]

(c) receive school employee payrolls and a warrant for the full amount of each payroll certified by the president and secretary of the board, deposit the warrants in a separate payroll account, and issue individual checks drawn on such account to each employee;[77]

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[70] N.J.S.A. 18A:17-31.

[71] N.J.S.A. 18A:13-14; N.J.S.A. 18A:8-33.

[72] N.J.S.A. 18A:17-31.

[73] N.J.A.C. 6:3-1.5.

[74] N.J.S.A. 18A:17-33.

[75] N.J.S.A. 18A:17-34.

[76] N.J.S.A. 18A:19-1.

(d) give public notice when funds are on hand for payment of interest bearing warrants issued for which no funds were available;[78]

(e) keep a record of moneys received and paid out by him in books provided for that purpose and in accordance with a bookkeeping system prescribed by the state board;[79]

(f) pay over the balance of school funds in his hands to his successor;[80]

(g) render a monthly report to the board giving a detailed account of all receipts, the amounts of all warrants issued, the accounts from which they were drawn, and the balance in each account;[81]

(h) render an annual report showing the amounts received and disbursed by him during the school year and file a copy with the county superintendent.[82]

When the school custodian is also the municipal custodian, school payroll checks may be signed by his deputy, if the deputy is properly bonded.[83]

E. The School District Auditor

Every board of education is required to employ a public school accountant to make an annual audit of the school district's accounts and financial transactions, which must be completed within three months of the close of the fiscal year.[84] The auditor must be a New Jersey registered municipal accountant or a New Jersey certified public accountant who holds a valid license as a New Jersey public school accountant issued by the New Jersey State Board of Public Accountants.[85]

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[77] N.J.S.A. 18A:19-9, 10.
[78] N.J.S.A. 18A:19-12.
[79] N.J.S.A. 18A:17-35; N.J.A.C. 6:20-2.1 *et seq.*
[80] N.J.S.A. 18A:17-35.
[81] N.J.S.A. 18A:17-36.
[82] N.J.S.A. 18A:17-36.
[83] N.J.S.A. 18A:19-11.
[84] N.J.S.A. 18A:23-1.

Each annual audit must cover the books, accounts and moneys of the board, of all officers and employees, of all athletic events, and of all pupil organizations conducted under board auspices.[86] The auditor must file a report of his audit and recommendations with the board and two copies with the commissioner.[87]

The report of the auditor must be received and acted upon by the board and his recommendations read and discussed at a public meeting within 30 days of receipt of the audit. The discussion must be noted in the board's minutes. A summary of the audit prepared by the board's secretary must be available for distribution to interested parties.[88] The commissioner is required to publish annually a summary of the auditor's recommendations for each school district and the steps which have been taken in each district for their implementation.[89] The commissioner may order an audit made by an accountant designated by him at the board's expense, if the board fails to have an audit made and completed in the prescribed time.[90]

In a Type I district, the comptroller, auditor or other officer authorized by law to audit claims against the municipality shall be the district comptroller. His employment and compensation are determined by the municipal governing body.[91] The secretary of the board must forward all warrants for payment, with itemized statements of the accounts on which they are drawn, to the district comptroller for examination and audit.[92]

The district comptroller must examine, under oath, any person presenting a bill against the district and investigate the facts, examine witnesses and other evidence whenever he deems it necessary to establish the accuracy of the claim.[93] The district comptroller may have free access to all books, papers and vouchers of the board or its officers.[94]

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[85] N.J.S.A. 18A:23-8.
[86] N.J.S.A. 18A:23-2.
[87] N.J.S.A. 18A:23-3.
[88] N.J.S.A. 18A:23-4, 5.
[89] N.J.S.A. 18A:23-3.
[90] N.J.S.A. 18A:23-6.
[91] N.J.S.A. 18A:17-37.
[92] N.J.S.A. 18A: 17-38.
[93] N.J.S.A. 18A:17-39.

If the district comptroller finds the warrant and statement correct, he countersigns the warrant and forwards it to the custodian of school moneys.[95] If the district comptroller believes a warrant is incorrect and should not be paid, he must return the warrant and statement to the secretary with an explanation, and the secretary must correct the warrant or present it to the board at its next meeting. If the board, after consideration, approves the payment by a majority vote of all members, the district comptroller must countersign the warrant and forward it to the custodian.[96]

F. The School Board Attorney

Often overlooked in any catalogue of school management personnel, the school board attorney has in practice become a vital member of the management team. The power of a local board to hire counsel has been affirmed by the courts.[97] Attorneys may be employed by the board just as any other professional, but do not normally acquire tenure.[98] The attorney's duties may be specified by the board, and should include (1) legal representation of the board, individual board members and appropriate staff, (2) attendance at all board meetings at which the need for assistance of counsel is anticipated, (3) legal drafting or review of legal documents, legal notices, proposed policies, etc, and (4) availability for consultation on all legal questions confronting the board and/or selected staff.

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[94] N.J.S.A. 18A:17-40.

[95] N.J.S.A. 18A:19-5.

[96] N.J.S.A. 18A: 19-6, 7, 8.

[97] **Merry v. Board of Education of Paterson,** 100 N.J.L. 273 (Sup. Ct. 1924).

[98] **Gill V. Hamilton Township Board of Education,** 44 N.J. Super. 79 (App. Div. 1957); **Koribanics v. Clifton Board of Education,** 48 N.J. 1 (1966); **Perella v. Jersey City Board of Education,** 51 N.J. 323 (1968).

Chapter VIII

Staff Personnel

Every school board member, since he serves on a body which employs many classifications of personnel, should know the provisions of state law concerning their employment, transfer, retirement, discharge and compensation.

A. Tenure

1. Teaching Staff Members

All teachers, principals, assistant principals, vice principals, superintendents, assistant superintendents, school nurses and all other members of the teaching staff who are required to hold appropriate certificates are protected by tenure after employment in the district: (a) for three consecutive calendar years or any shorter period set by the employing board; or (b) at the beginning of the fourth consecutive academic year, or (c) for the equivalent of more than three academic years within a period of four consecutive academic years.[1]

When a teaching staff member is transferred or promoted with his consent to a new position, he acquires tenure in the new position: (a) after two consecutive calendar years, or (b) at the beginning of the third academic year, or (c) after more than the equivalent of two academic years in a period of three consecutive academic years.[2]

No teaching staff member may acquire tenure in any position unless he is the holder of an appropriate certificate,[3] and unless he is, or until he becomes, a citizen of the United States.[4] Any teaching staff member who does not hold an appropriate certificate may be dismissed without charges or a hearing.[5]

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1. N.J.S.A. 18A:28-5.
2. N.J.S.A. 18A:28-6.
3. N.J.S.A. 18A:28-4.
4. N.J.S.A. 18A:28-3.
5. N.J.S.A. 18A:28-14.

Tenure of teaching staff members is not affected by any change in the method of government of the school district.[6] All principals, teachers and other employees in a school district which is dissolved as the result of the formation of a regional or consolidated district must be continued in their employment in the new district with their rights to tenure, pension and accumulated sick leave unaffected.[7]

2. Other Board Employees

Any secretary, assistant secretary, or business manager who devotes full time to the duties of his office and any person holding any secretarial or clerical position acquires tenure: (a) after three consecutive calendar years of employment, or (b) at the beginning of the fourth consecutive academic year.[8]

Attendance officers in city districts acquire tenure after employment for one year.[9]

Any janitor, unless he is appointed for a fixed term, enjoys tenure status. A janitor who is appointed for a definite term does not acquire tenure.[10] A board of education may reduce the number of janitors employed. The janitor so dismissed must be the one with the least number of years of employment in the district and he must be placed upon a preferred eligibility list for reemployment as vacancies occur.[11]

3. Reduction of Persons Under Tenure

The laws relating to tenure do not limit the right of any board of education to reduce the number of teaching staff members employed in the district whenever in the board's judgment it is advisable to abolish any such positions for reasons of economy or because of a reduction in the number of pupils or a change in the administrative or advisory organization of the district or for other good cause.[12] Reduction of teaching staff members must be made on the basis of seniority according to standards established by the commissioner. Teachers so dismissed must be placed on a preferred eligibility list for reemployment when vacancies occur.[13] Reduction in the number of teaching staff members or janitors may not be made for reasons of residence, age, sex, marriage, race, religion or political affiliation.[14]

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[6] N.J.S.A. 18A:28-15.

[7] N.J.S.A. 18A:8-34; N.J.S.A. 18A:13-49; N.J.S.A. 18A:30-3.1.

[8] N.J.S.A. 18A:17-2.

[9] N.J.S.A. 18A:38-33.

[10] N.J.S.A. 18A:17-3.

[11] N.J.S.A. 18A:17-4.

[12] N.J.S.A. 18A:28-9.

4. Dismissal of Tenure Employees

No employee of a board of education who has acquired tenure status may be dismissed except for inefficiency, incapacity, unbecoming conduct or other just cause and then only after written charges have been preferred against him and a hearing held before the Commissioner of Education.[15]

Written charges must be filed with the board secretary, and a written statement of evidence made under oath in support of the charges must be presented to the board. The board must forthwith provide the employee with a copy of the charge and of the statement and must give the employee an opportunity to submit a written statement of position and a written statement of evidence.

If the charge is inefficiency, the board must also provide the employee with a written notice specifying the nature of the alleged inefficiency and must allow the employee at least 90 days in which to correct the inefficiency.

After consideration of the documents presented to it, the board must determine, by a majority vote of its full membership (1) whether there is probable cause to credit the evidence in support of the charge and (2) whether the charge, if credited, is sufficient to warrant a dismissal or reduction in salary. Where the board makes this determination, it must forward the charge together with a certificate of such determination to the commissioner for a hearing. The board is required to forthwith notify the employee of its determination, either in person or by certified mail.[16] If the board makes no determination within 45 days after the receipt of the written charge, or within 45 days after the expiration of the time for correction of the inefficiency, if the charge is of inefficiency, the charge is deemed dismissed.[17] The consideration and actions of the board as to any charge shall not take place at a public meeting.[18]

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[13] N.J.S.A. 18A:28-10 *et seq.*; N.J.A.C. 6:3-1.10.

[14] N.J.S.A. 18A:28-10.

[15] N.J.S.A. 18A:6-10.

[16] N.J.S.A. 18A:6-11.

Upon certification of a charge, the board may suspend the employee with or without pay but, if a final determination by the commissioner is not made within 120 days after certification by the board, then the board must resume payment of the employee's full salary beginning on the 121st day and continuing until such determination is made. However, any sums received by the suspended employee as pay or salary from any substituted employment assumed during the suspension period are deducted from this full salary. If the charges are eventually dismissed by the commissioner, the employee must be reinstated with full pay from the date of suspension.[19]

The commissioner may dismiss the charges if he deems them insufficient to warrant dismissal or reduction of salary. Otherwise he must conduct a hearing on the charges within 60 days.[20]

The board which certified the charges is a necessary party in the hearing before the commissioner.[21]

The commissioner is required to render a written decision within 60 days after the close of the hearing and to serve a copy of his decision upon each party. The commissioner's decision is binding unless and until reversed upon appeal.[22]

In a tenure hearing, each party may be represented by counsel and has the right to testify, to produce witnesses in his own behalf, to cross-examine witnesses against him, and to compel the attendance of witnesses.[23]

Whenever a school employee is dismissed or suspended, and such dismissal or suspension is upon appeal decided to have been without good cause, the employee is entitled to compensation for the period covered by his dismissal or suspension, if written application is made within

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[17] N.J.S.A. 18A:6-13.

[18] N.J.S.A. 18A:6-11.

[19] N.J.S.A. 18A:6-14.

[20] N.J.S.A. 18A:6-16.

[21] N.J.S.A. 18A:6-17.

[22] N.J.S.A. 18A:6-25.

[23] N.J.S.A. 18A:6-20.

30 days after final determination.[24]

B. Nontenured Teaching Staff Members

All nontenured teaching staff members must be observed and evaluated in the performance of their duties at least three times during each school year but not less than once during each semester. These evaluations must take place before April 30 of each year. The evaluations may cover that period between April 30 of one year and April 30 of the succeeding year, except in the case of the first year of employment where the three evaluations must be completed prior to April 30. The number of such required observations and evaluations may be reduced proportionately when an individual teaching staff member's term of service is less than one academic year. Each evaluation must be followed by a conference between the teaching staff member and his or her superior. The purpose of this procedure is to recommend as to reemployment, identify any deficiencies, extend assistance for their correction and improve professional competence.[25] The observation and evaluation procedure must be carried out in accordance with rules established by the state board.[26]

On or before April 30 in each year, every board of education must give to each nontenured teaching staff member continuously employed by it since the preceding September 30 either (a) a written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary as may be required by law or policies of the board of education, or (b) a written notice that such employment will not be offered. If any board of education fails to give to any nontenured teaching staff member either an offer of contract for employment for the next succeeding year or a notice that such employment will not be offered, the board of education will be deemed to have offered to that teaching staff member continued employment for the next succeeding school year upon the same terms and conditions but with such increases in salary as may be required by law or policies of the board of education. If the teaching staff member desires to accept such employment, he must notify the board of education of such acceptance in writing on or before June 1.[27]

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[24] N.J.S.A. 18A:6-30.
[25] N.J.S.A. 18A:27-3.1.
[26] N.J.A.C. 6:3-1.19.

Any teaching staff member receiving notice that a contract for the succeeding school year will not be offered may, within fifteen days thereafter, request in writing a statement of the reasons for such non-reemployment. The statement of reasons must be given to the teaching staff member in writing within thirty days after the receipt of such request.[28] Upon timely request, the teaching staff member must also be granted an informal non-adversary hearing before the board of education.[29] The purpose of this last provision is to provide the teaching staff member with an opportunity to convince the board to offer reemployment. The board must notify the staff member of its final decision within three days following the informal appearance.[30]

C. Retirement Provisions

New Jersey provides for the retirement of its professional staff employees through the State Teachers' Pension and Annuity Fund.

All teachers employed by boards of education in New Jersey are required to become members of the fund. The law defines "teacher" very broadly to cover virtually any member of the professional staff, including nurses. However, substitute teachers are not permitted to join.[31]

Boards of education are required to deduct from salaries of members of the fund a "contribution rate" based on entrance age and sex. Such deductions must be forwarded to the fund monthly or at such intervals as the trustees of the fund designate. A 6% interest charge is levied on any board which delays transmittal of such deductions more than 30 days. Failure to transmit deductions constitutes a default on the part of the board, and the State Board of Education may withhold state aid until the default is made good.[32]

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[27] N.J.S.A. 18A:27-10 *et seq.*

[28] N.J.S.A. 18A:27-3.2; **Donaldson v. North Wildwood Board of Education**, 65 N.J. 236 (1974).

[29] N.J.A.C. 6:3-1.20; see also **Donaldson, supra.**

[30] **Id.**

[31] N.J.S.A. 18A:66-2.

[32] N.J.S.A. 18A:66-32.

A member of the fund receives life insurance coverage on a noncontributory basis equal to 1 1/2 times his annual salary.[33] During the first year of employment, a member of the fund is required to belong to a contributory insurance plan. Membership in the contributory insurance plan is optional after the first year of employment.[34]

Members of the fund do not have to make contributions for contributory insurance while on leave for up to two years because of illness.[35]

A member of the fund may elect to retire at any time after age 60 by filing a written request with the board of trustees. Retirement within one year after age 70 is mandatory.[36]

A member of the fund who has credit for 25 years or more of service may retire on a reduced allowance regardless of age.[37]

A member of the fund may retire on ordinary disability if he has been a member for 10 years preceding disability.[38]

A board, at its discretion, may retire and grant a pension to any employee who is not a member of and was not required by law at the time of his employment, or at any time thereafter, to become a member of a contributory retirement system, under the following conditions:

(a) The employee is not eligible to receive a pension for the same employment under any law of this state.

(b) Funds for the payment of the pension must be provided in the board's budget.

(c) The employee must be at least 65 years of age, or have been employed by the board for at least 40 years, or be permanently and totally disabled.

(d) The amount of the pension must be fixed by the board according to uniform percentages of final average salary applicable generally to all employees but which shall not exceed an amount, which, when added to the Social Security Old Age

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[33] N.J.S.A. 18A:66-38.

[34] N.J.S.A. 18A:66-53.

[35] N.J.S.A. 18A:66-38.

[36] N.J.S.A. 18A:66-43.

[37] N.J.S.A. 18A:66-37.

[38] N.J.S.A. 18A:66-39.

Insurance benefit for which the employee is or could be eligible, will produce a total retirement allowance equal to:

1. thirty percent of the final average salary for less than twenty years of employment by the board, or
2. fifty percent of the final average salary if employed by the board for 20 years or more; provided, however, that an employee having 35 years of public employment and being age 65, or having 40 or more years of public employment regardless of age, shall receive not less than 25 percent of such average salary.

(e) The amount of the pension, once established, may not be reduced because of an increase in the amount of the employee's Social Security benefit.

(f) No employee shall be eligible for disability benefits unless he shall have at least five years of employment continuously, or in the aggregate, with the board.

(g) No employee shall be eligible for a pension other than for disability unless he shall have at least fifteen years of employment continuously, or in the aggregate, with the board.[39]

D. Sick Leave

All school district employees who are steadily employed by the board of education or who are protected by tenure in their position must be granted sick leave with full pay for a minimum of ten school days in any school year.[40] Sick leave is defined by law to mean the absence from his post of duty of any person because of personal disability due to illness or injury or because he has been excluded from school by the school district's medical authority on account of a contagious disease or has been quarantined for such a disease in his household.[41] All days of this minimum sick leave which are not utilized in a particular year are accumulative and may be used for additional sick leave as needed in subsequent years.[42] When all sick leave is exhausted, the board, in its discretion, may pay the difference between the salary of the absent person and that of a substitute.[43]

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[39] N.J.S.A. 43:8B-2 *et seq.*

[40] N.J.S.A. 18A:30-2.

[41] N.J.S.A. 18A:30-1.

The board may grant leaves of absence not constituting sick leave or grant sick leave over and above the minimum required by law, except that no person is allowed to increase his total accumulation of sick leave by more than 15 days in any one year.[44]

Boards of education may grant partial or full transfer credit for unused sick leave days accumulated in another New Jersey school district. The amount of credit must be fixed by resolution and must be uniformly applicable to all employees.[45]

An employee who is absent because of on-the-job injury is entitled to full pay for up to one year less any workman's compensation pay, without affecting any accumulated sick leave.[46]

The board may require a physician's certificate to be filed with the board secretary in order to validate any sick leave claims.[47]

E. Teaching on Holidays

No teaching staff member can be required to perform his duties on any day which has been declared by law to be a public holiday, and no deduction can be made from such person's salary by reason of the fact that such a public holiday happens to be a school day. Any term of any contract made with any such teaching staff member which is in violation of these provisions is void.[48]

The following days are designated by statute as public holidays: New Year's Day, Martin Luther King's Birthday (January 15), Lincoln's Birthday (February 12), Washington's Birthday (third Monday in February), Good Friday, Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus

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[42] N.J.S.A. 18A:30-3.

[43] N.J.S.A. 18A:30-6.

[44] N.J.S.A. 18A:30-7.

[45] N.J.S.A. 18A:30-3.2.

[46] N.J.S.A. 18A:30-2.1.

[47] N.J.S.A. 18A:30-4.

[48] N.J.S.A. 18A:25-3.

Day (second Monday in October), Armistice or Veteran's Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day, any general election day, and any day designated by the Governor of New Jersey or the President of the United States as a day of religious observance. Where any of these designated days falls on a Sunday, the following Monday becomes a public holiday.[49]

F. Suits Against Board Employees

Whenever any civil action has been brought against any employee of a board of education, for any act or omission arising out of the performance of his duties, the board must defray all costs of defending such action, including reasonable counsel fees and expenses, together with the cost of appeal, if any, and must save harmless and protect the employee from any financial loss resulting from the suit. Boards of education may maintain appropriate insurance to cover all such damages, losses and expenses.[50]

Should any criminal action be instituted against any employee for any such act or omission and should the proceedings be dismissed or result in a final disposition in favor of the employee, the board must reimburse him for the cost of defending the suit, including reasonable counsel fees and expenses for the original hearing or trial and all appeals.[51]

G. Physical Examinations Required of Board Employees

The board of education must require a physical examination of every employee annually. The scope of the examination is determined under rules of the State Board of Education.[52] The board may also require an individual examination of an employee whenever in its judgment such employee shows evidence of deviation from normal physical or mental health.[53]

These examinations may be conducted by: (a) a physician or institution designated by the board, in which case all costs are borne by the board; or (b) at the option of the employee by a physician or institution of his own choice, approved by the board, in which case the expenses are paid by the employee.[54]

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[49] N.J.S.A. 36:1-1.

[50] N.J.S.A. 18A:16-6.

[51] N.J.S.A. 18A:16-6.1.

[52] N.J.S.A. 18A:16-2.

[53] N.J.S.A. 18A:16-2.

H. Minimum Salary Schedules

A full-time teacher who holds a standard or provisional certificate cannot be paid less than the amount prescribed in a minimum salary schedule which begins at $4,400 per year. The schedule provides for a minimum of $4,400 and annual increments of $250 until a maximum of $6,900 is reached for a teacher who does not hold a bachelor's degree or its equivalent; a minimum of $4,700 and annual increments of $250 until a maximum of $7,450 is reached for a teacher who holds a bachelor's degree or its equivalent; a minimum of $5,000 and annual increments of $250 until a maximum of $8,000 is reached for a teacher who holds a master's degree or its equivalent; and a minimum of $5,300 and annual increments of $250 until a maximum of $8,550 is reached for a teacher who holds a doctor's degree or has six years of training.[55]

Any teacher who is below his place on the salary schedule according to the appropriate training level and years of employment must receive on September 1 of each year an adjustment increment of $150 in addition to his employment increment until he has attained his place on the schedule according to his appropriate training levels and years of employment. Any such teacher who is under contract for any year of employment at a salary of less than the amount provided for the first year of employment in the appropriate training level must receive an increase in his salary to the amount provided for the first year of employment in the appropriate training level in lieu of his adjustment increment unless such adjustment is greater.[56] A year of military service is counted as a year of employment up to a maximum of four years.[57]

This salary schedule is a minimum schedule and does not interfere with any other schedule which meets its requirements.[58] A board of education has the power to increase for any teaching staff member or classification of members, the initial salary or the amount or number of increments.[59]

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[54] N.J.S.A. 18A:16-3.

[55] N.J.S.A. 18A:29-7.

[56] N.J.S.A. 18A:29-10.

[57] N.J.S.A. 18A:29-11.

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There are special statutory provisions for the withholding of any increment which is mandated by the minimum salary schedule.[60]

I. Withholding Salary Increments

A board of education has the authority to withhold a teacher's salary increment when its salary guide is above that mandated by the minimum salary law, and it has explicitly retained that authority and adheres to the proper procedures in exercising that authority.

Even though a board of education has the power to withhold an increment, such power must not be wielded in a manner which ignores the basic elements of fair play. A teacher has a basic right to know if and when his superiors are less than satisfied with his performance and the basis for this judgment; without such knowledge, the teacher would have no opportunity either to rectify his deficiencies or to convince his superiors that their judgment is erroneous. The teacher to be deprived of an increment must be put on notice that such a recommendation is to be made to the board on the basis of unsatisfactory evaluations, and he must be given the opportunity to speak in his own behalf. However, a full scale plenary hearing or the kind of formal proceedings necessary for dismissal of tenure teachers is not required for the withholding of an increment.[61]

The decision to deny an increment lies within the area of a board of education's discretionary powers, and it may not be upset unless patently arbitrary, without rational basis or induced by improper motives. The burden of proving unreasonableness is on the teacher. In the absence of clear and convincing proof that the board acted unreasonably or in a cursory manner in withholding the increment, the Commissioner of Education will not substitute his judgment for the board's discretion.[62]

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[58] N.J.S.A. 18A:29-12, 15.

[59] N.J.S.A. 18A:29-13.

[60] N.J.S.A. 18A:29-14.

[61] **Fitzpatrick v. Board of Education of Borough of Montvale**, 1969 S.L.D. 4.

[62] **Kopera v. West Orange Board of Education**, 60 N.J. Super. 288 (App. Div. 1960); **Dur-**

J. Certification of Teaching Staff Members

No teaching staff member may be employed in the public schools by any board of education unless he is the holder of an appropriate teacher's certificate.[63] Any contract between the board of education and a teacher is of no effect against the board whenever the board ascertains by notice in writing received from the county or local superintendent, or otherwise, that the teacher is not in possession of a proper teacher's certificate in full force and effect.[64]

It is the duty of the State Board of Examiners to issue appropriate teacher certificates.[65] The State Board of Examiners consists of the Commissioner of Education, ex officio, one assistant commissioner of education, two presidents of state colleges, one county superintendent, one superintendent of schools of a Type I district, one superintendent of schools of a Type II district, one high school principal, one elementary school principal, one librarian employed by the state or by one of its political subdivions, and four teaching staff members other than a superintendent, principal or librarian. The members of the board are appointed by the Commissioner of Education with the approval of the State Board of Education.[66]

Any certificate that has been issued by the State Board of Examiners may be revoked by it for inefficiency, incapacity, conduct unbecoming a teacher, or other just cause; but no certificate may be revoked unless the holder of the certificate has been given the opportunity to be heard.[67]

Information on the various types of certificates, the methods of certification and the requirements for certification may be found in Title 6 of the New Jersey Administrative Code.[68]

K. Miscellaneous Provisions

1. A board may not require teaching staff employees

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kin et al. v. Board of Education of the City of Englewood, 1971 S.L.D. 654, aff'd State Bd. 1972 S.L.D. 669; **Longo v. Absecon Bd. of Ed.**, 1975 S.L.D. 336.

[63] N.J.S.A. 18A:26-2.

[64] N.J.S.A. 18A:27-2.

[65] N.J.S.A. 18A:6-38.

[66] N.J.S.A. 18A:6-34.

[67] N.J.S.A. 18A:6-38.

[68] N.J.A.C. 6:11-1.1 *et seq.*

to reside in the school district in which they are employed.[69]

2. No board may make a religious test or inquiry concerning the religion of any candidate for employment.[70] A board may not refuse employment because of race, creed, color, national origin, marital status, sex, age, liability for service in the armed forces or nationality.[71] A board must pay female teachers compensation equal to that paid to male teachers holding similar positions and employment with similar training and terms of service.[72]

   There must be no discrimination based on sex in scale of wages, compensation, appointment, assignment, promotion, transfer, resignation, dismissal or other matters pertaining to employment.[73]

3. A school district receiving federal funds may not discriminate against qualified handicapped persons seeking employment. Such persons are those who, with reasonable accommodation, can perform the essential functions of the job for which they are hired. Furthermore, once such persons are employed, discriminatory terms and conditions of employment may not be imposed upon them.[74]

   The district must make reasonable accommodation to the physical or mental limitations of an otherwise qualified applicant or employee, unless the district can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Examples of reasonable accommodations include: (1) making facilities used by employees readily accessible to handicapped persons, (2) job-restructuring, (3) modified work schedules, (4) acquisition or modification of equipment, and (5) the provision of interpreters.[75]

   In general, a school board may not conduct a preemployment medical examination or make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature of his handicap. However, a board may make preemployment inquiry into an applicant's ability to perform job-related functions.[76] Additionally, if the board is taking affirmative action to hire handicapped persons pursuant to section 503 of the Rehabilitation Act of 1973, it may extend the opportunity to applicants for employment to indicate whether and to what extent they are handicapped.[77]

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[69] N.J.S.A. 18A:26-1.1.

[70] N.J.S.A. 18A:6-5.

[71] N.J.S.A. 10:5-12.

[72] N.J.S.A. 18A:29-2.

[73] N.J.S.A. 18A:6-6.

[74] 42 **Fed. Reg.** 22680 (1977).

[75] 42 **Fed. Reg.** 22680 (1977); See also **Gurmankin v. Costanzo,** 411 F. Supp. 982 (E.D. Pa. 1976); **Barnes v. Converse College,** 436 F.Supp. 635 (D.S.C. 1977).

4. By recorded roll call majority vote of the entire board, a board may approve a plan for salary deductions whenever 50 percent or more of the persons employed by the board indicate in writing their desire to participate in any hospital service plan, group insurance plan for themselves, spouses or dependent children, or to purchase U.S. government bonds or stamps.[78] The board may also, in its discretion, pay a part or all of the premiums on the policies of the groups so formed.[79]
5. With the employee's written consent, a board may deduct from the employee's salary contributions to a United Fund Community Chest or United Appeal.[80]
6. A board of education may purchase tax sheltered annuities on behalf of its employees as part of the state administered Supplemental Annuity Collective Trust.[81]
7. A board must grant permission to any professional employee to attend the annual convention of the New Jersey Education Association. Such permission may not exceed two days per year, and the employee may be required to file with the board secretary a certificate attesting to his attendance at all of

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[76] 42 Fed. Reg. 22681 (1977).

[77] Id.

[78] N.J.S.A. 18A:16-6.

[79] N.J.S.A. 18A:16-10.

[80] N.J.S.A. 52:14-15.9c.

[81] N.J.S.A. 52:18A-107 *et seq.*

the sessions for the dates he actually attended.[82]

8. Boards of education are required, when requested by an employee in writing, to pay the amount of his dues to an employee organization and deduct the amount from his salary.[83]
9. Upon the request of staff members who are employed for the academic year, the board may adopt a summer payment plan and implement it under rules promulgated by the state board for those employees who wish to participate.[84]
10. Contracts between a board of education and teachers must be in writing, in triplicate and signed by the president and secretary of the board and the teaching staff member.[85] Teacher employment contracts must specify: (a) the date the employment is to begin, (b) the kind of certificate held by the teacher and its expiration date, (c) the salary to be paid and (d) such other matters as may be necessary to a full and complete understanding.[86] One copy of the contract is filed with the board, one with the employee and one with the superintendent of schools if there is one, and otherwise with the county superintendent.[87]
11. The board may designate a person to act in place of any officer or employee who is absent, disabled or disqualified. A person in such an acting capacity does not acquire tenure.[88]
12. Any teaching staff member, under tenure of service, who desires to relinquish his position must give the employing board of education at least 60 days written notice of his intention, unless the board approves of a release on shorter notice; and if he fails to give such notice he will be guilty of unprofessional conduct and the commissioner may suspend his certificate for not more than one year.[89]

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[82] N.J.S.A. 18A:31-2.

[83] N.J.S.A. 52:14-15.9e.

[84] N.J.S.A. 18A:29-3.

[85] N.J.S.A. 18A:27-5.

[86] N.J.S.A. 18A:27-6.

[87] N.J.S.A. 18A:27-8.

[88] N.J.S.A. 18A:16-1.1.

[89] N.J.S.A. 18A:28-8.

Chapter IX

THE LOCAL BOARD AND THE PUBLIC

As public entities charged with important education policy-making responsibilities and the expenditure of public funds, local boards of education must meet a number of statutory requirements designed to insure that the public is kept adequately informed and has access to information concerning the decision-making process and activities of local boards.

A. The Sunshine Law

1. Meetings of Public Bodies

In enacting the Open Public Meetings Act (popularly known as the Sunshine Law) the Legislature declared that secrecy in public affairs undermines public faith in government and that the right of the public to witness in full detail all phases of the deliberation, policy formulation and decision-making of public bodies is vital to the proper functioning of the democratic process.[1]

In general, the statute requires that the public be given advance notice of and the right to attend meetings of public bodies and that all discussions and official actions, unless specifically exempted, take place in public.

The statute covers all public bodies organized by law and collectively empowered as a voting body to spend public funds or to perform a public governmental function affecting people's rights, obligations or benefits.[2]

A meeting of the public body is covered if it is open to or attended by all the members of the public body and is held with the intent of discussing or acting on public business.

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[1] N.J.S.A. 10:4-6 *et seq.*; N.J.S.A. 10:4-7; See also, **Pollio v. Deane**, 74 N.J. 562, 569-72 (1977).

[2] N.J.S.A. 10:4-8(a).

A meeting is excluded from the requirements of the law if it is attended by less than an effective majority of the members of the body.[3] An effective majority is defined as that number of members that must be present at the meeting in order for the body to take official action, *e.g.* five members of a nine member board.[4]

A meeting is also exempted if it is attended by or open to all the members of three or more similar public bodies at a convention or similar gathering.[5] However, a court has held that a joint discussion meeting, to which all members of several public bodies are invited for the purpose of discussing public business of mutual concern, is subject to the requirements of the Sunshine Law.[6]

Committee meetings may be subject to the requirements of the Sunshine Law. It is the opinion of the Attorney General that committee meetings are covered by the law if the committee is made up of an effective majority of the public body's members. Where a committee is composed of less than an effective majority of the body, the committee may be covered depending on the nature and extent of the authority delegated to the committee by the public body. According to the Attorney General, the decision turns on whether the committee is merely an advisory body or whether the public body has delegated to the committee the authority, in either a legal or practical sense, to make binding decisions affecting persons' rights or the expenditure of public funds.[7]

2. Notice

For all meetings covered by the statute, advance notice of the meeting must be given to the public. There are two types of notice under the Sunshine Law: annual notice, and adequate or 48 hour notice.

The requirement of annual notice means that at least once each year, within seven days following the annual organization or reorganization meeting, the public body must establish a schedule of its regular meetings to be held during the succeeding year. The schedule must contain the time and date of each meeting and the location of each meeting to the extent it is known. This schedule must be posted and maintained throughout the year in at least one public place reserved for such announcements, mailed to two designated newspapers and filed with the appropriate county or municipal office.[8] In addition, all persons requesting that a public body mail them a schedule of meetings must be sent a copy of the annual notice.[9] If the schedule is thereafter revised, the public body, within seven days of the revision, must post, mail and submit the revision in the manner described above.[10]

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[3] N.J.S.A. 10:4-8(b).

[4] **Guidelines on the Open Public Meetings Law,** Department of State, p. 4.

[5] N.J.S.A. 10:4-8(b).

[6] **Allen-Deane Corp. v. Bedminster Twp.**, 153 N.J. Super. 114 (App. Div. 1977), certif. den. 74 N.J. 272 (1977).

[7] Atty. Gen. F. O. 1976, No. 19.

Adequate or 48 hour notice means written advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting.[11]

The agenda required under this 48 hour notice provision must be somewhat specific as to the matter to be discussed or acted upon. For example, where a public body provided 48 hour notice of a special meeting and the agenda stated only that the purpose was to meet with a certain attorney, a court held that the agenda item was insufficient because the meeting was expressly called by the public body to discuss the settlement of a particular case.[12]

Note that the 48 hour notice provision expressly requires agenda information while the annual notice provision states no such requirement. The statute also states that if the annual notice complies with the statutory requirements, no further notice is required for any meeting contained in the annual notice.[13] Thus, a court has held that an agenda need not be published for a regular meeting for which annual notice has been provided; and if the public body chooses to publish an agenda in this situation, action taken upon matters not included on the agenda will not be voided by a court unless it finds that the omission was intentional or designed to deceive the public.[14]

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[8] N.J.S.A. 10:4-18.

[9] N.J.S.A. 10:4-19.

[10] N.J.S.A. 10:4-18.

[11] N.J.S.A. 10:4-8(d).

[12] **In the Matter of the Application of Monmouth Cty. to fix the Compensation to be Paid for the Property of Snyder-Westerlind Corp.,** ____ N.J. Super. ____ (App. Div. 1978).

[13] N.J.S.A. 10:4-8(d).

The adequate or 48 hour notice must be (1) prominently posted in at least one public place reserved for such announcements, (2) mailed, telephoned, telegrammed or hand delivered to at least two newspapers, one of which shall be the designated official newspaper, (3) filed with the clerk of the governing body of the political subdivision whose geographic boundaries are coextensive with those of the public body, and (4) sent to those persons requesting that such notice be mailed to them.[15]

The precise wording of this statutory provision would seem to indicate that the public body is not required to publish its notices, only to transmit the notices to the newspapers. The State Department Guidelines interpret the provision to require only that the notice be placed in the mail sufficiently in advance of the meetings so as to reasonably expect it to be received by the newspapers at least 48 hours prior to the meeting.[16] However, a court has held that the provision requires that the notice be sent in time to be published, and not simply delivered to the newspapers, 48 hours before the meeting.[17] It has also been held that where the notice is provided to the newspapers 48 hours before the meeting, the public body has made every reasonable effort to comply with the law, and its action at the meeting will not be voided simply because the newspaper fails to publish the notice.[18]

At the commencement of every meeting, the presiding person must announce publicly and have entered in the minutes an accurate statement that adequate notice of the meeting has been provided and the time, place and manner in which the notice was provided.[19]

A public body may hold an emergency meeting without adequate advance written notice if 3/4 of its members present vote in favor of holding the meeting and, as soon as possible following the decision to hold the meeting, notice is posted and given by telephone, telegram or delivery to two newspapers, one of which is the designated official newspaper.[20] An emergency meeting is defined as one required to be held in order to deal with matters of such urgency and importance that a delay for the purpose of providing adequate notice would be likely to result in substantial harm to the public interest.[21] However, even if the public body could have foreseen the need for the meeting and notice could have been given, failure to do so will not void the meeting.[22] Once the meeting is called, it must be limited to the matters of importance which necessitated the meeting.[23] At the commencement of an emergency meeting, the presiding person must announce publicly and have entered in the minutes that adequate notice was not provided, the nature of the urgency, the harm to the public in delaying the meeting, the limitation on the matter discussed at the meeting, the time, place and manner in which notice was provided, and the reason why a need for the meeting could not be foreseen or why the adequate notice could not be provided.[24]

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[14] **Crifasi v. Governing Body of the Borough of Oakland,** ____ N.J. Super. ____ (App. Div. 1978).

[15] N.J.S.A. 10:4-8(d); N.J.S.A. 10:4-19.

[16] **Guidelines, supra** at p. 9.

[17] **Jones v. East Windsor Regional Bd. of Ed.,** 143 N.J. Super. 182 (Law Div. 1976), appeal dismissed as moot ____ N.J. Super. ____ (App. Div. 1977).

[18] **Houman v. Mayor and Council of Borough of Pompton Lakes,** ____ N.J. Super. ____ (Law Div. 1978).

[19] N.J.S.A. 10:4-10.

3. Minutes

Minutes must be kept of all meetings, which at a minimum must include the announcement of the presiding person at the commencement of the meeting, the time and place of the meeting, the names of the members present, the subjects considered, the actions taken and the vote of each member on any items voted upon.[25]

Minutes must be taken of both open and closed session meetings, but the minutes of a closed session may be withheld from disclosure until such time as the reasons for discussing and acting on a matter in closed session no longer exist.[26] All others must be made available to the public as soon as they are prepared.[27]

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[20] N.J.S.A. 10:4-9.

[21] N.J.S.A. 10:4-9(b) (1).

[22] N.J.S.A. 10:4-9(b) (4).

[23] N.J.S.A. 10:4-9(b) (2).

[24] N.J.S.A. 10:4-10.

[25] N.J.S.A. 10:4-14; In **Mackenzie v. Princeton Regional Bd. of Ed.**, Superior Court , Law Division (Docket No. L-35698-76 P.W., decided September 23, 1977), the court held that a board may not utilize a secret ballot for the election of board officers at the organization meeting.

[26] **Guidelines, supra** at p. 13-16.

4. The Public Meeting Requirement

All meetings of public bodies must be open to the public at all times, unless the matter under consideration by the public body falls under one of the categories specifically exempted under the statute. All other matters, regardless of their controversial nature, must be discussed and acted upon in public. However, the public body retains the right to permit, regulate or prohibit the active participation of the public at any meeting.[28]

There are nine statutory exceptions to the public meeting requirement:

(1) any matter which by express provision of federal law, state statute or court rule is rendered confidential;

(2) any matter in which the release of information would impair a right to receive federal funds;

(3) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy, unless the individual concerned requests in writing that the matter be disclosed publicly;[29]

(4) any collective bargaining agreement, terms and conditions proposed for inclusion in such agreement and the negotiations of terms and conditions with employees or their representatives;

(5) any matter involving purchase, lease or acquisition of real property with public funds, the setting of banking rates or investment of public funds, where the public interest could be adversely affected if discussion were disclosed;

(6) any tactics and techniques utilized in protecting the safety and property of the pubic, if disclosure could impair such protection, and any investigations of violations or possible violations of the law;

(7) any pending or anticipated litigation or contract negotiation in which the public body is or may be-

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[27] N.J.S.A. 10:4-14.

[28] N.J.S.A. 10:4-12(a).

[29] See **Jones v. East Windsor Regional Bd. of Ed.**, 143 N.J. Super. 182 (Law Div. 1976), appeal dismissed as moot ____ N.J. Super. ____ (App. Div. 1977). (Closed session to interview applicants for board vacancy upheld).

come a party and any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his/her ethical duties as a lawyer;

(8) any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any prospective or current public officer or employee, unless all the individuals whose rights could be adversely affected request in writing that such matters be discussed at a public meeting. It has been held that a closed session to discuss the termination of employees in the context of a reduction in force is valid under this exception. However, the public body is required to provide the employees concerned with reasonable notice of its intention to consider in closed session personnel matters related to them in order to allow them to exercise their statutory right to request a public hearing;[30]

(9) any deliberations of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty or suspension or loss of a license or permit belonging to an individual as the result of an act or omission for which the individual is responsible.[31]

A public body may go into a closed session concerning matters included in any of the above exceptions to the public meeting requirement. However, prior to going into closed session, a resolution must be adopted at a public meeting stating the general nature of the subject to be discussed and stating as precisely as possible, the time when and the circumstances under which the discussion can be disclosed to the public.[32] If this resolution is passed at a prior public meeting for which notice has been provided, the public body may hold a meeting limited to the matter to be dealt with in closed session without providing additional notice therefor. In the event a resolution has not been passed by the public body at such prior public meeting, the public body must then provide adequate or 48 hour notice of the meeting and at that meeting pass the required resolution in open session prior to going into closed session.[33]

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[30] **Rice v. Union Cty. Regional High School Bd. of Ed.**, ___ N.J. Super. ___ (App. Div. 1977).

[31] N.J.S.A. 10:4-12(b).

[32] N.J.S.A. 10:4-13.

5. Sanctions

Any person who knowingly violates any of the provisions of the law is subject to a fine of $100 for the first offense and no less than $100 nor more than $500 for any subsequent offense. If a member of a public body believes a meeting is being held in violation of the law, he/she should immediately state this belief and his/her reasons therefor which must be recorded in the minutes. If the majority of those present overrule his/her objections, the objecting member may continue to participate without being exposed to personal liability.[34]

Any action taken by a public body at a meeting which did not comply with the provisions of the statute is voidable in a Superior Court proceeding which may be brought by any person within 45 days after the action sought to be voided has been made public. However, a public body may take corrective action by acting anew at a subsequent public meeting held in conformity with the statute.[35]

Strict adherence to each of the statutory provisions is required by the courts in determining whether a violation of the law has occurred. Substantial but less than perfect compliance with the law is not sufficient. However, once the court has determined that a violation has occurred, it may consider the nature, quality and effect of the violation in fashioning the corrective measures or remedy which it will order.[36]

B. The Right To Know Law

In enacting the Right to Know Law, the Legislature declared it to be the public policy of the State that public records be readily accessible for examination by the citizens of the State, with certain exceptions, for the protection of the public interest.[37] Every citizen is given the right, during regular business hours, to inspect, copy by hand or purchase copies of any public record.[38] No showing of any personal or particular interest in the material is required.[39]

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[33] Atty. Gen. F.O. 1976, No. 29.

[34] N.J.S.A. 10:4-17.

[35] N.J.S.A. 10:4-15(a); **See also Houman, supra.**

[36] **Polillo v. Deane,** 74 N.J. 562, 577-80 (1977).

Public records are defined in the Right to Know Law as all records which are required by law to be made, maintained or kept on file by any board, body, agency, department, commission or official of the State or any political subdivision thereof or by any public board, body, commission or authority created by the State or any of its political subdivisions.[40] This definition of public records has been expanded by judicial interpretation to include any record which is merely received or kept by the public body, regardless of whether there is any specific legal requirement that the record be maintained.[41]

Certain public records are exempted under the statute. A public body may deny access to records of an investigation in progress by such body if the inspection, copying or publication of such records is inimical to the public interest.[42] The statute also provides that records may be exempted by any other statute, resolution of the Legislature, Executive Order of the Governor, rule of court, any federal law, regulation or order, or by any regulation promulgated under the authority of any statute or Executive Order of the Governor.[43] In a case decided under this provision, a court denied a citizen's request under the Right to Know Law to obtain a poll list since another statute required that poll lists be sealed.[44] Another case upheld a board's refusal to disclose the contents of an employee's evaluation on the basis of an Executive Order of the Governor.[45] This Executive Order prohibits a governmental entity from disclosing personnel or pension records of an individual except for an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor and the amount of pension he/she is receiving. The order also allows disclosure of data which discloses conformity with specific experience, education or medical qualifications required for government employment or for receipt of a public pension but prohibits disclosure of detailed medical or psychological information.[46]

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[37] N.J.S.A. 47:1A-1.

[38] N.J.S.A. 47:1A-2.

[39] **Irval Realty v. Bd. of Public Utility Commissioners,** 61 N.J. 366, 372-73 (1972).

[40] N.J.S.A. 47:1A-2.

[41] **Trenton Times Corp. v. Trenton Bd. of Ed.,** 138 N.J. Super. 357, 360-62 (App. Div. 1976); **Citizens for Better Ed. v. Camden Bd. of Ed.,** 124 N.J. Super. 523, 528 (App. Div. 1973); **Nero v. Hyland,** 136 N.J. Super. 537, 539-40 (Law Div. 1975), rev'd on other grounds 146 N.J. Super. 46 (App. Div. 1977), certif. granted 74 N.J. 264 (1977).

[42] N.J.S.A. 47:1A-3.

[43] N.J.S.A. 47:1A-2.

[44] **Shanahan v. New Jersey State Bd. of Ed.,** 118 N.J. Super. 212 (App. Div. 1972).

[45] **Trenton Times Corp. v. Trenton Bd. of Ed.,** 138 N.J. Super. 357 (App. Div. 1976).

In the absence of a specific statute setting a price for a particular record, copies of non-exempted public records must be supplied upon the payment of the following fees:

First page to tenth page	$0.50 per page
Eleventh page to twentieth page	$0.25 per page
All pages over twenty	$0.10 per page[47]

Any citizen denied the right to inspect, copy or obtain a copy of a public record may apply to the Superior Court for an order requiring the custodian of the record to afford the desired access.[48]

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[46] Executive Order No. 11, issued November 15, 1974.

[47] N.J.S.A. 47:1A-2.

[48] N.J.S.A. 47:1A-4.

Chapter X

School Budgets

Preparing and adopting a budget is one of the most important functions of every board of education. The program of the year and all the dreams envisioned by a board can come true only when they are embodied in the budget, which is an educational plan expressed in money. Budget procedures, to some extent, vary according to the type of district in which one serves.

Each board of education prepares a budget for the ensuing school year on forms and in the detail prescribed by the commissioner. The budget shows: (a) the amounts of money necessary to be appropriated for various line items for the next year, (b) the amounts appropriated for each item for the current year, (c) the anticipated revenues for each item for next year, and their sources, (d) the anticipated revenues for each item for the current year, (e) the amount of surplus available at the beginning of the current year, and (f) the apportionment of state aid authorized for the district for the ensuing year.[1]

Rules of the State Board of Education require all boards of education to adopt a program-oriented budget system by the 1982-83 fiscal year. This system of program-oriented budgeting utilizes budget categories which reflect different types of instructional and non-instructional programs in order to relate appropriations to the "thorough and efficient" goals and objectives established pursuant to the Public School Education Act of 1975.[2]

This act also established limits upon the annual growth of school district budgets known as budget "caps". On or before November 15 of each year the commissioner must notify each school district of its maximum permissible budget for the following year. The cap figure applies only to that part of the district's budget funded by local taxes and by current expense equalization aid. Portions funded by other sources of revenue are not included within the cap figure.[3] (See Chapter IV, Section B(1), on school district budget caps).

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[1] N.J.S.A. 18A:22-8.

[2] N.J.A.C. 6:20-2.3(c), (d), (e).

The "T&E Law" also requires each local board to submit before December 1 of each year a copy of the proposed budget to the commissioner for review to determine whether the budget is adequate in light of the local board's annual report on progress made toward its "T&E" goals and standards.[4]

In districts having a board of school estimate, the budget must be prepared and delivered to each member of the board of school estimate on or before February 1. In regional districts the budget must be prepared on or before the first Tuesday in January and in all other Type II districts on or before the second Tuesday in January.[5]

Each board must fix a time, date and place for a public hearing on its budget.[6] Hearings must be scheduled as follows: (a) board of school estimate—between February 1 and February 15; (b) regional districts—between the first Tuesday in January and January 25; (c) Type II districts—between the second Tuesday in January and February 1. The board must publish the budget and hearing notice in a newspaper published or circulating in the district not less than 7 days prior to the hearing.[7]

A. Type I Districts

Type I district boards of education appoint two members to a board of school estimate annually in January. In addition to these school board members, the board of school estimate consists of two members of the governing body of the municipality, appointed by that body, and the mayor or chief executive officer.[8] Not later than February 15, the board of school estimate fixes the amount of appropriations necessary and makes certification to the board of education and to the municipal governing body.[9]

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[3] N.J.S.A. 18A:7A-25.

[4] N.J.S.A. 18A:7A-28.

[5] N.J.S.A. 18A:22-7.

[6] N.J.S.A. 18A:22-10.

[7] N.J.S.A. 18A:22-11.

[8] N.J.S.A. 18A:22-1.

The governing body must include the amount certified, up to one and one-half percent of the assessed valuations of ratables in the community, in its tax ordinance. Any appropriation in excess of one and one-half percent must have the consent of the governing body.[10] The Commissioner of Education has authority, on an appeal based upon the failure of the board of school estimate or municipality to certify sufficient money to maintain a thorough and efficient school system, to order the appropriation of additional funds up to the amount of budget request.[11]

In cases of emergency or underestimation of budget requirements, the board may deliver to each member of the board of school estimate a statement of the amount of additional money needed.[12] The board of school estimate must then meet within a reasonable time, and determine the amount needed.[13] The governing body thereupon must appropriate and raise the money in the manner permitted municipalities in emergencies.[14] The board may borrow money, if necessary, between July 1 and January 1, not exceeding one-half of the amount appropriated for current expenses and repairs. The interest rate may not exceed six percent per year.[15]

B. Type II Districts

Not later than February 1 the board of education fixes, by a recorded roll call majority vote of its full membership, the amounts of appropriations to be voted upon at the annual election.[16] If the amounts of appropriation are approved, the secretary of the board certifies such amounts plus the sums needed for debt redemption and interest charges to the county board of taxation before April 1.[17]

If the voters reject any item at the annual election, the governing body of the municipality or municipalities, after consultation with the board of education and within 30 days, must certify the amounts it determines to be necessary to the county board of taxation.[18] Should the governing body or bodies fail to make such certification, or if the amount certified is less than required, the Commissioner of Education makes the final determination and certifies the amounts required to the county tax board.[19] Whenever it is necessary to raise additional sums over the amount provided in the last annual school budget, the board may call a special election of the voters to ask for an appropriation therefor. If the appropriation is voted, the board may borrow the amount in anticipation of taxes to be collected from the next tax levy.[20] If the board determines that it is necessary to raise additional funds by special tax to purchase and condemn land; to build, enlarge, repair, or furnish a school; to pay for evening vocational schools and classes for foreign-born; or to pay current expenses; it may ask the voters at a special election to authorize such a levy. If authorized, the board may borrow in anticipation of the taxes to be raised at interest not to exceed six percent on notes maturing not later than December 31 of the year in which the taxes are to be raised.[21]

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[9] N.J.S.A. 18A:22-14.
[10] N.J.S.A. 18A:22-17.
[11] **Board of Education of Elizabeth v. City Council of Elizabeth,** 55 N.J. 501 (1970).
[12] N.J.S.A. 18A:22-21.
[13] N.J.S.A. 18A:22-22.
[14] N.J.S.A. 18A:22-23.
[15] N.J.S.A. 18A:22-25.
[16] N.J.S.A. 18A:22-32.
[17] N.J.S.A. 18A:22-33.

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[18] N.J.S.A. 18A:22-37.

[19] N.J.S.A. 18A:22-38.

[20] N.J.S.A. 18A:22-41, 42.

[21] N.J.S.A. 18A:22-40, 41, 42.

Chapter XI

School Elections

A. Dates and Notices

The annual election in Type II districts is held on the second Tuesday in February.[1] In regional school districts, with a few exceptions, the election occurs on the first Tuesday in February. The exceptions are all-purpose regionals consisting of a consolidated district or a regional comprising more than one municipality which is itself a constituent of a larger regional district, in which cases the election is held on the second Tuesday in February.[2] If either Tuesday falls on a legal holiday, the election is held the following day.[3]

At least seven notices must be posted not less than ten days before the election, one on each schoolhouse and the others at public places designated by the board. The notices must specify the date, time and place of the election, the offices to be filled, the substance of any public question to be voted on, the boundaries or numbers of the polling districts and the location of the polling place for each.[4] The election notice must be published at least once in a newspaper published in the municipality or, if there be none, or if such newspaper will not be published in time, in a newspaper published in the county or state and circulating in the municipality.[5]

B. Candidates

Each candidate for election, including incumbents seeking reelection, must be nominated directly by petition, signed by at least 10 persons not including the candidate.[6]

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[1] N.J.S.A. 18A:44-2.
[2] N.J.S.A. 18A:13-10.
[3] N.J.S.A. 18A:14-2.
[4] N.J.S.A. 18A:14-19.
[5] N.J.S.A. 18A:14-19.
[6] N.J.S.A. 18A:14-9.

Each nominating petition, addressed to the secretary of the board, must set forth: (a) that the signers are qualified voters; (b) the name, residence and post office address of the candidate and the office for which he is endorsed; (c) that the signers endorse the candidate and ask that his name be printed on the ballot; (d) that the candidate is legally qualified to be a board member. A certificate must accompany the nominating petition, signed by the candidate, stating that he is qualified to be a board member, that he consents to be a candidate, and that if elected he will accept the office.[7] Each nominating petition must be sworn to by one of the signers, stating that the petition is signed in the handwriting of the named persons, that the signers are legally qualified to vote at the ensuing election, and that the petition is prepared and filed in good faith to endorse the candidate and secure his election.[8]

Nominating petitions must be filed with the secretary on or before 4:00 p.m. of the 40th day before date of election. Nominating petitions for special elections pursuant to change of district classification must be filed on or before 4:00 p.m. of the 15th day before the special election.[9] Except in the case of an inadequate number of signatures, when a nominating petition is defective, the secretary must notify the candidate of the defect and the date of printing the ballot. The candidate may amend the petition to remedy the defect at any time before the date set for printing except that signatures may not be added.[10]

A candidate for a board of education may withdraw his name as a candidate by filing a signed notice in writing of his withdrawal with the secretary of the board, on or before 4:00 p.m. of the 32nd day before the date of the election. The name of the candidate is then withdrawn from the ballot and the other names on the ballot listed below the withdrawn name are advanced one place respectively.[11]

C. Campaigning

School elections are subject to the New Jersey Campaign Contributions and Expenditures Reporting Act.[12] This statute requires every school election candidate whose campaign expenditures exceed $1,000 to file a detailed report on campaign contributions and expenditures with the Election Law Enforcement Commission. If expenditures do not exceed $1,000, any contributions of more than $100 from any one source must still be reported and the source identified.[13]

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[7] N.J.S.A. 18A:14-10.

[8] N.J.S.A. 18A:14-11.

[9] N.J.S.A. 18A:14-9.

[10] N.J.S.A. 18A:14-12.

[11] N.J.S.A. 18A:14-12.1.

School election campaign materials must be properly identified. The name and address of the printer must appear on the face of campaign materials. Materials must also contain the name and address of either (1) the person causing the material to be printed, copied or published or (2) the person who is paying for the materials. This requirement applies to any circular, statement, advertisement or other printed matter but does not apply to any bona fide news item or editorial comment published in a newspaper.[14] The material can be printed or paid for by an organization, and the name and address of the organization may be used provided that the name of at least one person in authority and acting for the group is also given.[15]

School funds may not be used to support a particular candidate or to advocate adoption or rejection of a bond issue or budget; campaign materials may not be produced or distributed through the use of school equipment or facilities.[16] Public school pupils cannot be used to distribute any type of campaign materials.[17]

D. Voters

The secretary must make written request for the necessary signature copy registers at least 10 days before any school election.[18] The registers list all persons entitled to vote in the election. The signature copy registers will be given to the secretary on the day preceding or the day of the election. They must be returned to the commissioner of

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12. N.J.S.A. 19:44A-1 *et seq.*
13. N.J.S.A. 19:44A-16(c).
14. N.J.S.A. 18A:14-97, 97.3.
15. N.J.S.A. 18A:14-97.2.
16. ***Citizens to Protect Public Funds v. Parsippany-Troy Hills Board of Education***, 13 N.J. 172, 179-82 (1953).
17. N.J.S.A. 18A:42-4.
18. N.J.S.A. 18A:14-47.

registration by 3:00 of the afternoon of the day succeeding the election.[19]

Persons who may vote at the election are: every citizen of the United States age 18 years, or older, who shall have met the residency requirements under state and federal law and who has been permanently registered at least 40 days prior to the date of election.[20]

Civilian absentee ballots may be applied for and cast by qualified and registered voters who will be unable to vote at the poll because: (a) of absence from the state; (b) of illness or physical disability; (c) of observance of a religious holiday; (d) of resident attendance at a school, college or university; or (e) of the nature and hours of the voter's employment.[21] Military absentee ballots may be applied for and cast by a voter who is unable to cast his ballot at the polls because he is: (a) absent on military service, or (b) a patient in a veteran's hospital and provided he has resided in New Jersey at least 30 days and in the county at least 30 days.[22]

A person who claims he is registered, despite the fact that his name does not appear in the register, may vote if he signs a prepared affidavit form prescribed by the Commissioner of Education. So may a person registered in another district of the county, who claims he has filed a change of address notice at the proper time before the election. Any school election official can take such affidavit.[23] A person falsely signing such an affidavit shall be guilty of a misdemeanor.[24]

E. Polling Places

At least one suitable polling place must be provided in a schoolhouse or other convenient public place.[25] The board may provide additional temporary polling places whenever it anticipates an unusually heavy vote in a particular election or whenever 100 or more registered voters so petition at least 20 days before the election.[26] Whenever, at two consecutive annual elections, more than 500 votes are cast, the board shall establish an additional polling place for each 500 votes or part thereof, and shall divide the district approximately equally.[27]

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[19] N.J.S.A. 18A:14-47.

[20] U.S. Const. amend. XXVI; N.J.S.A. 18A:14-44; N.J.S.A. 19:4-1.

[21] N.J.S.A. 19:57-3.

[22] N.J.S.A. 19:57-3.

[23] N.J.S.A. 18A:14-52.

[24] N.J.S.A. 18A:14-66.

[25] N.J.S.A. 18A:14-4.

Each polling place must be suitably equipped with booths, chairs, tables, lights, and other proper equipment.[28] At least two booths must be installed at each polling place, and, where paper ballots are used, at least one booth for each 100 votes or major fraction thereof cast at the preceding election in the polling district.[29] The ballot box shall be at least one foot in depth, width, and length and constructed of wood, metal, or glass with a properly slitted hinged top which must be kept locked while the polls are open.[30]

F. Ballots

The ballot must conform to specific requirements set forth in the law, among which are: (a) instructions to the voter to use crosses(x), plus signs (+) or checks (✓) as the valid marks; (b) designation of the terms for which candidates are to be elected; (c) blank spaces in which the names of unlisted candidates may be written or pasted.[31]

The position in which the name of the candidate appears on the ballot is determined by a drawing conducted by the secretary at 8 p.m. on the day following the last day for filing nominating petitions unless that day falls on a Sunday or on the day of, or the day immediately preceding, a public holiday, in which case the drawing is held on the next succeeding day which is not a public holiday.[32] The grouping of two or more candidates or political party designations is expressly prohibited.[33] Questions to be voted on are placed immediately following the names of the candidates.[34] Ballots must be printed on plain uniform white paper of such thickness that printing cannot be distinguished from the back of the paper.[35]

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[26] N.J.S.A. 18A:14-4.1.

[27] N.J.S.A. 18A:14-5.

[28] N.J.S.A. 18A:14-20.

[29] N.J.S.A. 18A:14-21.

[30] N.J.S.A. 18A:14-23.

[31] N.J.S.A. 18A:14-35, 36.

[32] N.J.S.A. 18A:14-13.

[33] N.J.S.A. 18A:14-42.

[34] N.J.S.A. 18A:14-37.

Each board must appoint a judge of elections, an inspector of elections, and two clerks of elections for each polling place and may appoint additional clerks not to exceed one for every two signature copy registers. The election officials must be qualified voters of the district who are not members or employees of the board or candidates for board membership. The appointments are made at the January meeting of the board if paper ballots are to be used or at the last regular meeting not less than 40 days prior to the election if voting machines are used.[36] The board may pay each election official $4.00 per hour for each hour actually worked.[37]

G. Voting Machines

Boards, if they so desire, may use voting machines in annual or special school elections if machines are used in their districts in the general or municipal elections.[38] To use voting machines, boards must notify the superintendent of elections or the county board, in writing, not less than 40 days before the election date. The machines will be delivered at such polling places and at such time as the board of education shall designate.[39] Elections with voting machines are conducted as far as practicable in the same manner as general and municipal elections.[40] The superintendent of elections and the county board of elections perform the same duties as they perform in general and municipal elections, except that they may not be required to prepare, challenge or strike out lists for use at school elections.[41] The board of education must appoint at a regular meeting at least 40 days before the election, such election officers as are necessary. They must be chosen from the members of the district election boards comprised within the boundaries of the polling districts, insofar as practicable.[42] The secretary must furnish to the officers having control and custody of the voting machines, at least seven days before the election, official ballots for use in voting machines.[43] Written notice of the time and place when the prepared voting machines may be examined must be mailed to each candidate.[44] The board of freeholders may charge a rental fee of $5.00 per machine plus the cost of any damages or it may waive the fee. The board of education may also be required to pay the expenses of transporting the machines or other reasonable costs.[45]

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[35] N.J.S.A. 18A:14-33.
[36] N.J.S.A. 18A:14-6.
[37] N.J.S.A. 18A:14-8.
[38] N.J.S.A. 18A:14-39.
[39] N.J.S.A. 18A:14-40.
[40] N.J.S.A. 18A:14-42.
[41] N.J.S.A. 18A:14-42.
[42] N.J.S.A. 18A:14-6.

H. Conduct of Elections

Polls must be open between the hours of 5 and 9 p.m. and during any additional time which the board may designate between the hours of 7 a.m. and 9 p.m. and as much longer as is necessary to permit those present to cast ballots.[46] A board member, or in his absence the judge of the election, or in the absence of both, the secretary of the board declares the polls opened at each polling place at the time fixed by the board. Voting continues without recess from then until the time the polls close.[47]

Each candidate nominated by petition may act as challenger and may also appoint one challenger for each municipal election district included in each polling place. Names of challengers and their assigned polling places shall be filed with the secretary not later than five days before the election. All challengers must be legal voters in the district. The secretary shall give each challenger a certificate which shall be submitted by the challenger to the election officer at the designated polling place.[48] In any election in which a public question is submitted, the appointment of one challenger favoring and one challenger opposing the question is permitted for each municipal election district.[49] If the polls will be open for more than four hours, alternate challengers may be appointed to permit periodic relief of challengers not more often than every two hours.[50] Petitions for the appointment of such challengers must contain the signatures of at least 10 qualified voters and must be filed with the secretary of the board at least five days before the election.[51]

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[43] N.J.S.A. 18A:14-41.

[44] N.J.S.A. 18A:14-42.

[45] N.J.S.A. 18A:14-43.

[46] N.J.S.A. 18A:14-45.

[47] N.J.S.A. 18A:14-46.

[48] N.J.S.A. 18A:14-15, 16.

[49] N.J.S.A. 18A:14-18.1, 18.2.

The board must provide, and one of the election officials must keep, a poll list at each polling place.[52] Each voter must sign his name and address prior to receiving an official ballot.[53] The number of each voter's ballot must be recorded opposite his name.[54] The voter's signature in the poll list must be compared with the signature found in the signature copy register before he is given a ballot.[55] Procedures are provided for those unable to write.[56] If a voter is challenged, it is the duty of the election officials to determine his right to vote.[57] The election official shall instruct voters how to fold the ballots and shall see that the requirements of a secret ballot are met.[58]

Immediately after the close of the polls the election officials must count the votes for each candidate and for and against each public question. The counting must be open and public. The election officials must keep tally sheets of the votes as counted which are to be signed by the judge and clerks of the election.[59]

A plurality of the votes cast is sufficient to elect.[60] The judge of elections must announce the result publicly.[61] A candidate may secure a certified statement of the count upon request made in writing to the members of the election board, which certificate shall be issued before the closing of the polling place.[62] Any person destroying, falsifying, or altering records of elections shall be guilty of a misdemeanor.[63]

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50. N.J.S.A. 18A:14-15, 18.1.
51. N.J.S.A. 18A:14-18.2.
52. N.J.S.A. 18A:14-48.
53. N.J.S.A. 18A:14-50.
54. N.J.S.A. 18A:14-50.
55. N.J.S.A. 18A:14-51.
56. N.J.S.A. 18A:14-51.1.
57. N.J.S.A. 18A:14-51.2.
58. N.J.S.A. 18A:14-53.
59. N.J.S.A. 18A:14-57.
60. N.J.S.A. 18A:14-58.
61. N.J.S.A. 18A:14-59.
62. N.J.S.A. 18A:14-60.
63. N.J.S.A. 18A:14-65.

The tally sheets, poll list and ballots for each polling place are placed in a package and sealed by the inspector of elections. The judge of elections delivers the sealed package to the secretary of the board accompanied by a statement of the result of the election signed by the election officers. The secretary adds to the tally the canvass of the absentee ballots as certified to him by the county board of elections. The secretary then combines the reports from all polling places and announces the result of the election.[64]

The secretary of the board must forward to the county superintendent, within five days, a statement of the results of the election, the ballots, poll lists and tally sheets. The county superintendent must preserve these records and make the poll lists available for public inspection for one year.[65]

I. Special Elections

Special elections may be called whenever in the judgment of the board the interests of the schools require it. Special elections are conducted in the same manner as the annual school election. No more than two special elections for the same purpose may be held within any period of six months without approval of the commissioner.[66]

When an election is called to vote on a bond issue, the same form of ballot as is required for submission of public questions at annual school elections shall be used.[67] No action to contest the validity of any election ordering the issuance of bonds shall be commenced after the expiration of 15 days from the date of such election.[68]

J. Recounts

If voting machines are used, their counter compartments must be locked by the election officials as soon as the count of the vote is completed.[69] When any defeated candidate has reason to believe that an error was made in counting the vote, he may apply within ten days of the announcement of the results to the commissioner for a recount.[70] Similarly, any ten voters having reason to believe that an error was made in counting the votes on any question, proposition or referendum may apply to the commissioner for a recount.[71]

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[64] N.J.S.A. 18A:14-61.

[65] N.J.S.A. 18A:14-62.

[66] N.J.S.A. 18A:14-3.

[67] N.J.S.A. 18A:14-3.2.

[68] N.J.S.A. 18A:24-65.

[69] N.J.S.A. 18A:14-63.1.

Any recount shall be made under the supervision of an authorized representative of the commissioner with the cooperation of county election officials and the parties at interest or their representatives, within thirty days after the date of the election or the announcement of the result of the voting.[72] If the recount reveals errors which alter the result of the election, the commissioner shall order the expenses of the recount to be paid by the school district.[73] If no error shall appear sufficient to alter the result of the election, the expenses of the recount must be paid from the security deposit required to be made by the party or parties making the application.[74]

Where the commissioner finds as a result of a recount that an error has occurred which alters the result of the election, he shall order such relief as is appropriate.[75]

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[70] N.J.S.A. 18A:14-63.2.

[71] N.J.S.A. 18A:14-63.3.

[72] N.J.S.A. 18A:14-63.5.

[73] N.J.S.A. 18A:14-63.8.

[74] N.J.S.A. 18A:14-63.6, 14-63.7, 14-63.9.

[75] N.J.S.A. 18A:14-63.13.

Chapter XII

SCHOOL DISTRICT BUSINESS PRACTICES

In discharging their responsibilities, boards of education expend public moneys appropriated to them. The expenditures of such funds are controlled by law to insure that taxpayers' interests are safeguarded. Statutes pertaining to the control of school district business practices were, at one time, found in both Title 18A and in Chapter 11 of Title 40A, the Local Public Contracts Law. On March 3, 1976, however, an amendment became effective removing school districts from those governmental units subject to the provisions of the Local Public Contracts Law. School districts later received their own statutory coverage with the passage of the Public School Contracts Law (hereafter referred to as "the statute") on June 2, 1977. This law purported to unify those statutes dealing with school district business practices which were formerly found in both Title 18A and Title 40A. At the same time, it repealed Chapter 18 of Title 18A and all amendments and supplements thereto.

A. Requirements of the Public School Contracts Law

1. Purchases, Contracts and Agreements Requiring Advertising

As a general statement, public advertising for bids and a competitive bidding process must precede every contract for the performance of work or the furnishing or hiring of any materials or supplies to be paid out of school funds. Contracts requiring public advertising for bids and competitive bidding may be awarded and made only by the board of education.[1]

The requirement of public advertising for bids does not apply to a purchase, contract or agreement where the school funds expended, or forseeably to be expended for similar work or materials, during the fiscal year do not exceed $2,500.[2] In the case of purchases that are not annually recurring, public advertising is not required as long as the school funds forseeably to be expended do not exceed $2,500 in any one year period.[3] Boards of education are thus required to estimate purchases of a similar nature over the course of a year and are specifically prohibited from dividing contracts or purchases, which are single in character and have a value of $2,500 or more, into smaller parts in order to avoid the requirements of public advertising and bidding. When contracts involve less than the $2,500 threshold, they may be made, negotiated and awarded by the board's contracting agent (secretary, business administrator or business manager) when so authorized by a resolution of the board.[5]

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[1] N.J.S.A. 18A:18A-4.

The statute lists thirteen subject matter areas where advertising for bids is not required. These purchases or contracts may be made and awarded by the board by resolution at a public meeting without public advertising for bids or bidding even where the purchase or contract exceeds the $2,500 amount.[6]

(1) Professional services—Such services are defined as those rendered by a person authorized by law to practice a recognized profession, the performance of which requires knowledge derived from specialized instruction. Professional services also include those rendered in the performance of work that is original and creative in character in a recognized field of artistic endeavor.[7]

(2) Extraordinary unspecifiable services—Such services are defined as those which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.[8] The statute specifically mandates that these services are excepted from the bidding re-

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[2] N.J.S.A. 18A:18A-3.

[3] Id.

[4] N.J.S.A. 18A:18A-8.

[5] N.J.S.A. 18A:18A-3.

[6] N.J.S.A. 18A:18A-5.

[7] N.J.S.A. 18A:18A-2(h).

[8] N.J.S.A. 18A:18A-2(g).

quirement only when they cannot reasonably be described by written specifications. The legislative preference is for open competitive bidding in this area.[9]

(3) Work done by employees of the contracting unit—

This exception to the requirement of advertising for bids is curious, as the statute contains no definition of the term "contracting unit." Early drafts of the statute defined "contracting unit" as "any board of education or district." The final version, however, deleted this definition. In the body of the statute, numerous uses of the term "contracting unit" were deleted; "contracting unit" was consistently replaced by "board of education." It would, thus, seem safe to assume that the legislative intent was to remove work done by employees of the board of education from the requirement of advertising for bidding.

(4) The printing of all legal notices and legal briefs to be used in any legal proceeding in which the board of education is a party.

(5) Textbooks, copyrighted materials, kindergarten supplies, and student produced publications and services incidental thereto.

(6) Food supplies, including food supplies for home economics classes when purchased pursuant to rules of the State Board of Education and in accordance with the provisions of N.J.S.A. 18A:18A-6. (This latter provision requires a vendor of fresh milk to agree to purchase an amount from New Jersey producers or associations at least equal to the amount he/she proposes to furnish to the school district.)

(7) Any products or services of a public utility which is subject to the jurisdiction of the Board of Public Utility Commissioners.

(8) The printing of bonds, and documents necessary to the issuance and sale thereof, by a board of education.

(9) Equipment repair service when such is in the

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[9] N.J.S.A. 18A:18A-5(a)(2).

nature of an "extraordinary unspecifiable service" (see above definition).

(10) Insurance, including the purchase of insurance coverage and consultant services.

(11) The publishing of legal notices in newspapers as required by law.

(12) The acquisition of artifacts or other items of unique, intrinsic, artistic or historic character.

(13) Election expenses, including advertising expenses incidental thereto.

Without public advertisement for bids, a board may also enter into any purchase, contract or agreement with the United States, the State of New Jersey, a county or municipality or any board, body, officer, agency or authority of this State, or any other state.[10] The board may make use of a further exception when it has advertised for bids on two occasions and has received no response. If the board determines after reasonable inquiry that no other governmental body or agency is able to meet its specifications, it may then negotiate a contract or agreement. Such a contract must be authorized by the affirmative vote of two-thirds of the full membership of the board.[11]

Another exception to the requirement of advertising for bids occurs when the board has previously advertised on two occasions and has rejected all bids received. Such bids may be rejected on two grounds: (1) when the board has determined that they are not reasonable as to price on the basis of cost estimates prepared for the board, or (2) when the board has determined that they were not independently arrived at in open competition. After such rejection of bids, the board may then negotiate and award a contract as long as it meets the following conditions: (1) the board must provide both notice of its intention to negotiate and a reasonable opportunity to negotiate to each responsible bidder, (2) the negotiated price is lower than the lowest rejected bid price of a responsible bidder who bid thereon, and is the lowest negotiated price offered by any responsible supplier, (3) any change in the terms, conditions and specifications in the original advertisement for bids must be stated in the board resolution awarding the contract, and (4) the negotiated price must be lower than the price of the same or equivalent materials or supplies available from the state, county or municipality in which the board is located. The board's contract must, once again, be authorized by a resolution adopted by the affirmative vote of two-thirds of the full membership of the board.[12]

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[10] N.J.S.A. 18A:18A-5(b).

[11] N.J.S.A. 18A:18A-5(c).

The final exception to the requirement of advertising for bids arises in emergency circumstances when the health or safety of occupants of school property requires the immediate delivery of articles or the immediate performance of services. Such articles or services may be ordered by the contracting agent (the board secretary, business administrator or business manager) after he/she has received a written requisition describing the nature of the emergency, certified by the employee in charge of the building where the emergency occurred. After the articles or services are furnished, the board becomes obligated for payment and must take action to pay the vendor. The statute directs the State Board of Education to prescribe rules and procedures to implement the section dealing with emergency purchases and contracts.[13]

2. Solicitation of Quotations

Although the statute does not require public advertisement for bids in all cases, it requires that the board's contracting agent solicit quotations, whenever practicable, when the estimated cost of a contract or purchase is over $500. Contracts for professional services are specifically excepted from this requirement.[14]

After quotations have been solicited, the award of the contract shall be made on the basis of the lowest responsible quotation received, which quotation is most advantageous to the board of education, taking other factors into consideration. The statute, however, requires the contracting agent to file a statement of explanation of the reason or reasons why he/she did not award a particular contract or purchase on the basis of the lowest quotation received. When he/she deems it "impractical", the contracting agent is not required to solicit quotations in the case of an extraordinary unspecifiable service. He/she must, however, file a statement explaining why such solicitation would have been impractical.[15]

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[12] N.J.S.A. 18A:18A-5(d).

[13] N.J.S.A. 18A:18A-7.

[14] N.J.S.A. 18A:18A-37.

3. Joint Purchasing Agreements

The statute authorizes two or more boards of education to enter into agreements for the purchase of supplies, materials or work. A board of education may also enter into such agreements with the governing body of the municipality or county wherein it is located.[16] These joint agreements must set forth the categories of work materials and supplies to be purchased, the manner of advertising for bids and of awarding of contracts, and the method of payment by each participating board of education, municipality or county.[17] If a controversy arises among the parties (assuming they are all school districts within the same county), the matter shall be referred to the county superintendent for a determination. His/her decision may be appealed to the commissioner and state board. If the parties are school districts in different counties, the dispute shall be referred to the county superintendents of the counties for joint determination. If they are unable to agree, the matter shall be referred to the commissioner for determination.[18]

4. Specifications and Plans

Any specifications drawn for purposes of bidding must be drafted in a manner to encourage free, open and competitive bidding. No specifications may require any standard , restriction, condition or limitation not directly related to the purpose, function or activity for which the purchase or contract is made. Nor may specifications require that a bidder be a resident of, or have his/her place of business located in, the county or school district where the contract is to be performed. Such a residency requirement may be imposed, however, where the physical proximity of the bidder is necessary for the efficient and economical purchase or performance of the contract.[19]

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[15] Id.

[16] N.J.S.A. 18A:18A-11.

[17] N.J.S.A. 18A:18A-12.

[18] N.J.S.A. 18A:18A-14.

Specifications drawn for purposes of competitive bidding may not discriminate on the basis of race, religion, or national origin. Specifications may not require the furnishing of "brand name" goods or materials but may require "brand name or equivalent." When the materials to be supplied or purchased are patented or copyrighted, such materials may be purchased by specification when the board resolution authorizing their purchase so indicates. Furthermore, the special need for such patented or copyrighted materials must be directly related to the performance, completion or undertaking of the purpose for which the purchase or contract is made.[20] Three further requirements of specifications for bids are: (1) they must include any option for renewal, extension or release which the board may intend to exercise or require, (2) they must include any terms and conditions necessary for the performance of any extra work, and (3) they must disclose any matter necessary to the substantial performance of the contract.[21] The purpose of these requirements is to alert all potential bidders to all information which may impact upon their decision to bid and the price that they bid.

Specifications for the erection of any building, or any part of a building, must be submitted for prior approval to the State Board of Education. Subsequent changes in such specifications must also be approved by the State Board.[22]

The statute also requires that all specifications for bids for the construction, remodeling or renovation of any public building shall provide facilities for physically handicapped persons. The State Board of Education has authority to promulgate rules prescribing the kinds, types and quality of such facilities.[23]

When the entire cost of the construction, alteration or repair of a building will exceed $2,500, separate plans and specifications must be prepared for each of the following: (1) the plumbing and gas fitting work, (2) the heating and ventilating systems and equipment, (3) the electrical work, including any electrical power plant, (4) the structural steel and ornamental iron work, and (5) all other work and materials required for the completion of the project. The board shall advertise for and receive separate bids for each of these five categories and also bids for all the work and materials required to complete the building to be included in a single overall contract. In the event that the sum total of the amounts bid by the lowest responsible bidder for each category is less than the amount bid by the lowest responsible bidder for all the work and materials, the board shall award separate contracts for each of the categories to the lowest responsible bidder therefor.

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[19] N.J.S.A. 18A:18A-15.

[20] Id.

[21] Id.

[22] N.J.S.A. 18A:18A-16.

[23] N.J.S.A. 18A:18A-17.

[24] N.J.S.A. 18A:18A-18.

Two final requirements for specifications are: (1) they must fix the date before which the work shall be completed, or the number of working days to be allowed for its completion, and (2) they must specify that only products manufactured or grown in the United States be used, wherever available.[25]

5. Bidding

All advertisements for bids must be published in a newspaper sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but in no event less than ten days prior to such date. The advertisement must designate the manner of submitting the bids and the time and place at which the bids will be received. If bids are received by mail, they shall be sealed and not opened until such time as all bids are unsealed. At that time, the board's contracting agent (secretary, business administrator or business manager) shall publicly unseal all bids and announce the contents. All bidders have the right to be present at this occasion.[26]

No bid shall be accepted which does not conform to the specifications previously announced by the board. The board, furthermore, retains the right to reject *all* bids.[27]

The board may require from any bidder a certificate showing that he/she owns, leases or controls all the necessary equipment required by the specifications. If the bidder is not the owner of such equipment, his/her certificate should state the source from which the equipment shall be obtained, and shall be accompanied by a certificate from the owner granting the bidder control of the equipment during such time as may be necessary to complete the work.[28]

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[25] N.J.S.A. 18A:18A-20; see also K.S.B. Technical Corp. et al. v. North Jersey District Water Supply Commission et al., ___ N.J. ___ (decided December 23, 1977).

[26] N.J.S.A. 18A:18A-21.

[27] N.J.S.A. 18A:18A-22.

The board may also require that a bid be accompanied by a guarantee in the amount of 10% of the bid, but not in excess of $20,000. The purpose of this guarantee is to insure that, if the contract is awarded to the bidder, he/she will enter into said contract and will furnish any performance bond or other security required. If in connection with a financial grant, any federal law imposes a condition other than the 10%–$20,000 guarantee, the federal law prevails.[29]

When a surety company bond is required in the advertisement or specifications for a contract, the board shall require from every bidder a certificate from a surety company stating that it will provide the contractor with a bond in such sum as is required. A bidder may offer the bond of an individual, instead of that of a surety company, by submitting with his/her bid a certificate signed by such individual. The board of education may reject any such bid if it is not satisfied with the sufficiency of the individual surety offered.[30]

6. Qualification of Bidders

All persons desiring to bid on any contract requiring public advertisement for bids, the entire cost whereof will exceed $10,000, must first be classified as to the character and amount of public work on which they are qualified to submit bids. The board shall accept bids only from persons qualified in accordance with such classification. The statute authorizes the State Board of Education to adopt regulations which establish the qualifications of bidders. Such qualifications shall be fixed according to the financial ability and experience of the bidders and the capital and equipment available to them. All qualification regulations must, however, be written in a manner which (1) will not unnecessarily discourage full, free and open competition, (2) will not unnecessarily restrict the participation of small business in the bidding process, (3) will not create undue preferences, and (4) will not violate any other provisions of law. The statute permits the State Board of Education to delegate to the Department of the Treasury, or other appropriate State agency, the authority to qualify bidders.[31]

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[28] N.J.S.A. 18A:18A-23.

[29] N.J.S.A. 18A:18A-24.

[30] N.J.S.A. 18A:18A-25.

Upon the completion of every contract for public work, the entire cost of which exceeds $10,000, the board of education shall report as to the contractor's performance to the department responsible for qualifying bidders.[32] The board shall also furnish such a report if the contractor is in default. The department responsible for qualifying bidders is then required to consider such reports as a basis for denial of a favorable classification to prospective bidders.[33]

7. Awarding contracts

The board of education must award the contract or reject all bids within such time as it has specified in its advertisement for bids, but in no case can it take more than sixty days to reach that decision. The board may, however, hold any bids for consideration for a longer period with the consent of the bidders.

After ten days from the opening of the bids (Sundays and holidays excepted), all bid security except the security of the three apparent lowest responsible bidders shall, if requested, be returned. Within three days (Sundays and holidays excepted) after the awarding of the contract and the approval of the contractor's performance bond, the bid security of the remaining unsuccessful bidders shall be returned to them.[34]

The statute mandates that all purchases, contracts or agreements which require public advertisement for bids shall be awarded to the lowest responsible bidder.[35] However, because the board retains the right to reject all bids, only when the board decides to award a contract must it make such an award to the lowest responsible bidder. The term "lowest responsible bidder," as used in the Public School Contracts Law, has not yet received a definitive judicial interpretation. However, the same term was used in the now repealed Section 18-20 of Title 18A. That section contained a clause stating that "all contracts shall be awarded to the lowest responsible bidder." This clause was given a definitive interpretation by the New Jersey Supreme Court in the early case of *Schwitzer v. Board of Education.*[36] The Court held that the question of whether the "lowest" bidder was also the "lowest responsible" bidder should be determined by the board of education. However, before disqualifying the lowest bidder, the board should conduct an investigation upon notice and hearing. The lowest bidder is thus entitled to a hearing before the board at which time he/she can present evidence as to his/her "responsibility." If the board then decides to reject the lowest bidder as being "irresponsible," such action is final and will not be disturbed by the court "unless it appears that it was taken in bad faith or the proofs were of such character as to satisfy reasonable men of the company's responsibility".[37]

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[31] N.J.S.A. 18A:18A-27.

[32] N.J.S.A. 18A:18A-15(e).

[33] N.J.S.A. 18A:18A-29.

[34] N.J.S.A. 18A:18A-36.

[35] N.J.S.A. 18A:18A-37.

8. Form of Contracts and Bonds

The Public School Contracts Law requires all contracts for the performance of work or the furnishing of materials, supplies or services to be in writing. The State Board of Education is given authority to prescribe the forms and manner in which such contracts shall be made and executed, and the form and manner of execution and approval of all guarantee, indemnity, fidelity and other bonds.[38]

The statute further authorizes contracts to include liquidated damage clauses. Such damages are those which the parties themselves agree in advance are reasonable in the event of violation of the terms and conditions of the contract.[39]

9. Contracts Extending Beyond the Fiscal Year

Boards of education are authorized by the statute to enter into contracts exceeding the fiscal year in the following areas:

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[36] 79 N.J.L. 342, 344 (1910).

[37] **Id.** at 344; **see also Rose v. Bd. of Ed. of East Orange,** 39 N.J. Super. 565 (Law Div. 1956); **Case Box Lunch, Inc. v. Bd. of Ed. of the City of Trenton,** 72 S.L.D. 479.

[38] N.J.S.A. 18A:18A-40.

[39] N.J.S.A. 18A:18A-41.

(1) The supplying of (a) fuel for heating purposes, for any term not exceeding in the aggregate three years, or (b) fuel or oil for use of automobiles, autobuses, motor vehicles or equipment for any term not exceeding in the aggregate, three years.

(2) The plowing and removal of snow and ice for any term not exceeding in the aggregate, three years.

(3) The collection and disposal of garbage and refuse, for any term not exceeding in the aggregate, three years.

(4) Data processing service, for any term of not more than five years.

(5) Insurance, for any term of not more than three years.

(6) Leasing or servicing of automobiles, motor vehicles, electronic communications equipment, machinery and equipment of every nature and kind, for any term not exceeding in the aggregate, five years, provided, however that such contracts shall be entered into subject to rules and regulations promulgated by the State Board of Education.

(7) The supplying of any product or the rendering of any service by a telephone company which is subject to the jurisdiction of the Board of Public Utility Commissioners, for a term not exceeding five years.[40]

All of these multiyear leases and contracts, with the exception of those listed under (7) above, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause.[41]

10. Supervision, Inspection, Condemnation, Rejection

Repairs of all school buildings shall be supervised by the business manager of the district. If the district does not have a business manager, the board of education may delegate such power to any appropriate officer of the board.[42]

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[40] N.J.S.A. 18A:18A-42.

[41] Id.

The business manager (or if none exists, an appropriate officer employed by the board) shall also have authority to inspect all work, materials or supplies that are furnished to the district under contract. In the event that any of the work, materials or supplies do not conform to the specifications of the contract, they shall be rejected.[43]

11. Sale of Personal Property

A board of education may, by resolution, authorize the sale of its personal property not needed for school purposes. If the estimated fair value of the property exceeds $2,500 in any one sale, and it is neither livestock nor perishable goods, it shall be sold at public sale (auction) to the highest bidder. Notice of the date, time and place of the public sale, together with a description of the items to be sold and the conditions of sale, shall be published once in a newspaper. Such sale shall be held not less than seven nor more than fourteen days after the publication of the notice thereof.[44]

On the other hand, personal property may be sold to the United States, the State of New Jersey, another board of education or to any body politic by private sale without advertising for bids. Furthermore, if no bids are received at a public sale, the property may then be sold at a private sale without further publication or notice thereof. In no event, however, may it be sold at less than its estimated fair value. Estimated fair value means the market value less the cost to the board of education of continued storage or maintenance of the property.[45]

The board may reject all bids at a public sale if it determines that such rejection is in the public interest. In any case where the board has rejected all bids, it may readvertise the personal property for subsequent public sale. If, at the second sale, it elects to reject all bids again, it may then sell such personal property at a private sale without additional public notice. However, the negotiated price at such private sale cannot be less than the highest price of any bid rejected at the preceding two public sales.[46]

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[42] N.J.S.A. 18A:18A-43.

[43] N.J.S.A. 18A:18A-44.

[44] N.J.S.A. 18A:18A-45.

[45] Id.

The board is authorized to sell personal property at private sale without advertising for bids if its estimated fair value does not exceed $2,500, or if it is either livestock or perishable goods.[47]

12. Miscellaneous Provisions

No board of education shall be subject to any legal action for damages for actions taken by virtue of the provisions of the Public School Contracts Law.[48]

The Public School Contracts Law further provides that no board of education nor contractor doing work for the board of education is required to secure either a building permit or approval of its plans and specifications for the erection or alteration of a school building from the municipality where the building is located.[49] However, local school districts are subject to several provisions in the State Uniform Construction Code Act.[50] This Act mandates that final plans for the construction or alteration of a public school must be filed with the municipality's code enforcement agency when they are submitted to the Department of Education for approval. The local agency shall then have the right to determine whether the plans violate the provisions of the "Guide for Schoolhouse Planning and Construction," adopted by the State Board of Education.[51] The local agency shall also determine if the plans are detrimental to the health and safety of the community. The local agency's decision is binding on the board, but the board may appeal to the Department of Education.[52]

Furthermore, although a building permit need not be obtained from the municipality, the New Jersey Supreme Court has announced that public schools are subject to local zoning ordinances.[53]

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[46] Id.

[47] Id.

[48] N.J.S.A. 18A:18A-46.

[49] N.J.S.A. 18A:18A-49.

[50] N.J.S.A. 52:27D-119 *et seq.*

[51] N.J.A.C. 6:22-1.1 *et seq.*

[52] N.J.S.A. 52:27D-130.

[53] **Township Committee of the Township of Denville v. Bd. of Ed. of the Vocational School**

The provisions of the Public School Contracts Law do not apply to contracts for the transportation of pupils to and from schools. Pupil transportation contracts continue to be regulated by Chapter 39 of Title 18A.[54]

B. Other Statutory Provisions

Although for the most part, the Public School Contracts Law governs school district business practices, school board members should also be aware of several other important statutes.

The Law Against Discrimination applies to all contracts for the construction, alteration or repair of any building or public work or for the acquisition of materials, equipment, supplies or services. The board must include verbatim, in its bid specifications and contracts, three paragraphs which are set out in the statute. These paragraphs require that (1) the contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status or sex, and the contractor must take affirmative action to ensure that such applicants are recruited and employed without regard to these characteristics, (2) the contractor, in all advertisements for employees, must state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status or sex, and (3) the contractor will send to each labor union with which he/she has a collective bargaining agreement a notice advising the union of the contractor's commitments under the Law Against Discrimination.[55]

A recently enacted statute requires a corporate bidder for public school contracts to submit with its bid a list of the names and addresses of all stockholders owning 10% or more of its stock. If the bidder is a partnership, it must submit a similar list of those owning a 10% or greater interest in the partnership. Since a board may not award a contract to any corporation or partnership failing to comply with this requirement, it should be included in the bid specifications.[56]

In the County of Morris, 59 N.J. 143 (1971); **Roman Catholic Diocese of Newark v. Ho-Ho-Kus Borough**, 42 N.J. 556 (1964).

[54] N.J.S.A. 18A:18A-49.1.

[55] N.J.S.A. 10:5-33.

[56] N.J.S.A. 52:25-24.2.

The New Jersey Prevailing Wage Act requires the board to ascertain from the Commissioner of Labor and Industry the prevailing wage rate in the locality for each craft or trade needed to perform the contract and to specify in the contract that workmen employed by the contractor shall be paid not less than the prevailing wage rate.[57]

Boards are required to make sure that bills are paid properly and that no bill is paid unless it is authorized by law and the rules of the board, is fully itemized and verified, has been duly audited as required by law, has been presented to and approved by the board at a meeting, and that the amount required is available for the purpose.[58] Every bill exceeding $25, except for payrolls and debt service, must be verified by affidavit or a signed declaration that the bill is correct, that the articles have been furnished or services rendered, and that no bonus has been received or given.[59]

In districts having a district comptroller, all warrants with itemized statements of accounts for which they are drawn must be forwarded by the board secretary for examination and audit by the district comptroller.[60]

It is the board's responsibility to designate the depository of school funds.[61]

Every board, by means of a report of the board secretary, must make a detailed report to the county superintendent of its financial transactions and of any other matters in such manner and form as are prescribed by the Commissioner of Education.[62] The bookkeeping system prescribed by the State Board of Education must be used in all school districts.[63]

The board may publish an annual report of the conditions of the schools and the finances of the district.[64] The board may also establish and operate petty cash funds pursuant to state board rules.[65]

All funds derived from athletic events or other activities

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57. N.J.S.A. 34:11-56.25 *et seq.*

58. N.J.S.A. 18A:19-2.

59. N.J.S.A. 18A:19-3.

60. N.J.S.A. 18A:17-38.

61. N.J.S.A. 18A:17-34.

62. N.J.S.A. 18A:17-10.

63. N.J.S.A. 18A:4-14; N.J.A.C. 6:20-2.1 *et seq.*

64. N.J.S.A. 18A:11-2.

65. N.J.S.A. 18A:19-13; N.J.A.C. 6:20-2.10.

of pupil organizations must be administered, expended and accounted for pursuant to state board rules.[66]

Finally, the school board must cause an annual audit of its accounts and financial transactions to be made by its accountant. This audit must be completed not later than three months after the end of the school fiscal year.[67] Within five days of the submission of this report of the audit to the board, the accountant must file two duplicate copies in the office of the commissioner. The commissioner must then publish annually a summary of the recommendations made by the accountant for each school district and the steps which have been taken in each district for their implementation.[68]

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[66] N.J.S.A. 18A:19-14.

[67] N.J.S.A. 18A:23-1.

[68] N.J.S.A. 18A:23-3.

Appendix

An Overview of the New Jersey and Federal Judicial Systems

The usual process of resolving school law disputes by appeal to the commissioner, the state board, and the appellate courts is outlined in Chapter 1. Local boards of education, however, are often involved in litigation which arises through other court processes; they are also involved in disputes which fall under the jurisdiction of state administrative agencies other than the Department of Education. For this reason, a basic knowledge of these agencies and of the state and federal court systems will prove beneficial.

Boards of education are frequently involved in proceedings before the Public Employment Relations Commission. PERC's quasi-judicial jurisdiction extends to unit determination and recognition questions, unfair practice charges, and scope of negotiations determinations.[1]

Boards of education may also become involved in disputes over the eligibility of former employees for unemployment benefits under a recently enacted law.[2] Local appeal tribunals initially hear cases involving unemployment benefit disputes; appeals from these tribunals may be taken to the Board of Review.[3] Similarly, the state Division of Workers' Compensation contains the administrative machinery to hear cases involving job-related injuries.[4]

Cases involving boards of education also may arise in the state Division on Civil Rights. This agency is empowered to hear cases involving allegations of discrimination based on race, creed, color, national origin, ancestry, age, marital status, sex, or liability for service in the Armed Forces of the United States.[5] At the federal level, the Equal Employment

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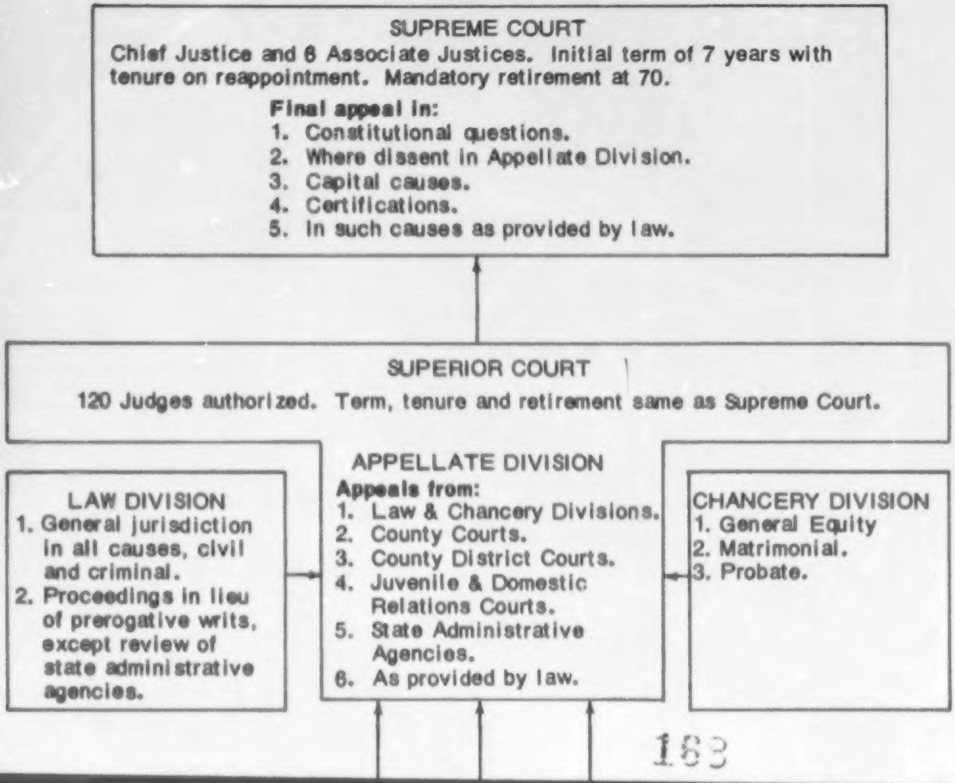
1. For a complete discussion of PERC and the Public Employment Relations Law, see Volume 6 of the **What Every Board Member Should Know** series, Taylor, Spenla and Barbour, **The Public Employment Relations Law** (NJSBA, 1976).
2. N.J.S.A. 43:21-1 *et seq.*, as amended by *L.* 1977, *c.* 307.
3. N.J.S.A. 43:21-6 and 10.
4. N.J.S.A. 34:1A-12, 34:1A-5.1.
5. N.J.S.A. 10:5-6.

NEW JERSEY COURT SYSTEM

As of September 1, 1976



SUPREME COURT

Chief Justice and 6 Associate Justices. Initial term of 7 years with tenure on reappointment. Mandatory retirement at 70.

Final appeal in:

1. Constitutional questions.
2. Where dissent in Appellate Division.
3. Capital causes.
4. Certifications.
5. In such causes as provided by law.

SUPERIOR COURT

120 Judges authorized. Term, tenure and retirement same as Supreme Court.

LAW DIVISION

1. General jurisdiction in all causes, civil and criminal.
2. Proceedings in lieu of prerogative writs, except review of state administrative agencies.

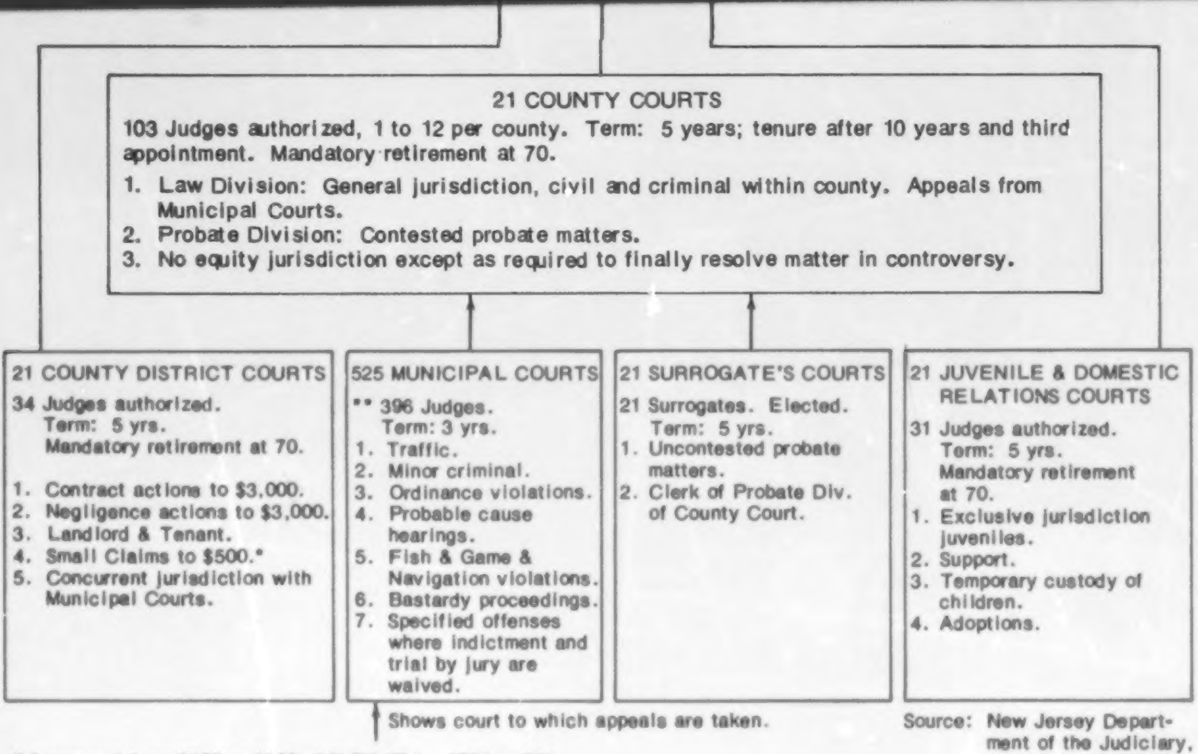
APPELLATE DIVISION

Appeals from:

1. Law & Chancery Divisions.
2. County Courts.
3. County District Courts.
4. Juvenile & Domestic Relations Courts.
5. State Administrative Agencies.
6. As provided by law.

CHANCERY DIVISION

1. General Equity
2. Matrimonial.
3. Probate.



21 COUNTY COURTS

103 Judges authorized, 1 to 12 per county. Term: 5 years; tenure after 10 years and third appointment. Mandatory retirement at 70.

1. Law Division: General jurisdiction, civil and criminal within county. Appeals from Municipal Courts.
2. Probate Division: Contested probate matters.
3. No equity jurisdiction except as required to finally resolve matter in controversy.

21 COUNTY DISTRICT COURTS

34 Judges authorized.
Term: 5 yrs.
Mandatory retirement at 70.

1. Contract actions to $3,000.
2. Negligence actions to $3,000.
3. Landlord & Tenant.
4. Small Claims to $500.*
5. Concurrent jurisdiction with Municipal Courts.

525 MUNICIPAL COURTS

** 396 Judges.
Term: 3 yrs.

1. Traffic.
2. Minor criminal.
3. Ordinance violations.
4. Probable cause hearings.
5. Fish & Game & Navigation violations.
6. Bastardy proceedings.
7. Specified offenses where indictment and trial by jury are waived.

21 SURROGATE'S COURTS

21 Surrogates. Elected.
Term: 5 yrs.

1. Uncontested probate matters.
2. Clerk of Probate Div. of County Court.

21 JUVENILE & DOMESTIC RELATIONS COURTS

31 Judges authorized.
Term: 5 yrs.
Mandatory retirement at 70.

1. Exclusive jurisdiction juveniles.
2. Support.
3. Temporary custody of children.
4. Adoptions.

↑ Shows court to which appeals are taken.

Source: New Jersey Department of the Judiciary, Administrative Office of the Courts.

* Increased from $200 to $500, 5/1/75 (P.L. 1975, c.72)
** Number of judges has increased.

Opportunities Commission exists to hear similar claims of discrimination in employment practices based on race, color, religion, sex or national origin.[6]

Appeals from the decisions of all New Jersey administrative agencies may be taken to the Appellate Division of Superior Court. (Refer to the diagram of the New Jersey court system on pages 160-161). The Appellate Division also hears appeals from the major trial-level courts in the state. The most important trial-level courts, for school board purposes, are the County Courts, the Law Division of Superior Court, and the Chancery Division of Superior Court. Each County Court has original trial jurisdiction of civil and criminal matters arising within the county. The Law Division of Superior Court has similar jurisdiction in civil and criminal cases arising in the county; where to file such a suit is largely a tactical consideration for the plaintiff's attorney. Examples of civil cases that may be heard by the County Courts and by the Law Division of Superior Court are the following: (1) personal injury suits against boards of education, (2) litigation arising from construction and commercial contracts entered into by boards, and (3) litigation arising from the interpretation of collective bargaining agreements.

The Chancery Division of Superior Court is also a trial-level court, but its jurisdiction lies mainly in general equity matters. The term "equity" is best understood by referring to the type of relief the plaintiff is seeking. If the plaintiff seeks an order compelling the defendant to perform some action or refrain from performing some action (as opposed to an order compelling the defendant to pay a sum of money), the plaintiff is seeking a remedy in equity. For example, a suit seeking an injunction compelling striking employees to return to work would constitute an action in equity and would, therefore, be filed in the Chancery Division of Superior Court. Another example of an action in equity would be a suit seeking a court order compelling a defaulting contractor to finish construction of a building. (A suit against the same contractor for the payment of monetary damages would constitute an "action at law.") The Chancery Division of Superior Court also has jurisdiction of trials where the plaintiff seeks to enjoin arbitration proceedings under a collective bargaining agreement, or where the plaintiff desires to have the arbitrator's decision overruled.

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[6] Title VII of Civil Rights Act of 1964.

Board members should also be aware of the jurisdiction of the Municipal Courts (cases involving traffic offenses, minor crimes, and ordinance violations) and of the Juvenile and Domestic Relations Courts (juvenile delinquency cases and disputes involving temporary custody of children).

Although the litigation involving New Jersey school districts arises primarily in the state court system, there are instances when actions are initiated in the federal courts. The United States Constitution states: "The judicial power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."[7] Under this constitutional grant of authority, Congress has seen fit to create 92 federal judicial districts in the United States.[8] A United States District Court sits in each of the 92 federal judicial districts. The United States District Courts are the trial-level courts within the federal system.

The boundaries of one of the federal judicial districts are the same as those of the state of New Jersey; thus, there exists a United States District Court for the District of New Jersey. Congress has mandated that the President shall appoint eleven district judges for the federal judicial district of New Jersey.[9] Court sessions are held in Camden, Newark and Trenton.[10]

The federal district courts have original jurisdiction of civil cases arising under the federal Constitution or federal statutes, as long as the amount in controversy exceeds $10,000.[11] If the case arises under certain federal statutes, such as the Civl Rights Acts or the Bankruptcy Act, the $10,000 requirement need not be satisfied.[12] Finally, the federal district courts hear cases when the parties are citizens of different states, and the amount in controversy exceeds $10,000.[13]

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[7] U.S. Const., art. 3, sec. 1.

[8] 28 U.S.C.A. §§81 *et seq.*

[9] 28 U.S.C.A. §133.

[10] 28 U.S.C.A. §111.

[11] 28 U.S.C.A. §1331.

[12] 28 U.S.C.A. §1343; 28 U.S.C.A. §1334.

An appeal of a United States District Court decision may be taken to the United States Court of Appeals for the circuit in which the district court is located. Congress has created eleven circuits, most of which comprise several states. New Jersey, Pennsylvania, Delaware and the Virgin Islands constitute the Third Circuit.[14] The Court of Appeals for the Third Circuit sits in Philadelphia.

The federal court system's highest court is, of course, the United States Supreme Court. Appeals of the decisions of the Courts of Appeals may be taken to the Supreme Court on a limited basis.[15]

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[13] 28 U.S.C.A. §1332.

[14] 28 U.S.C.A. §41.

[15] 28 U.S.C.A. §1254.

UNITED STATES COURT SYSTEM

U. S. SUPREME COURT

Chief Justice and 8 Associate Justices.

Any six constitute a quorum.

Reviews Courts of Appeals cases in certain circumstances.

11 U. S. COURTS OF APPEALS

Number of judges ranges from 3 to 15.

Chief judge is the circuit judge who is senior in active service and under 70 years of age.

Hears appeals from U. S. District Courts.

92 U. S. DISTRICT COURTS

Conducts trials where:

1. Matter arises under U. S. law or U. S. Constitution and amount exceeds $10,000.
2. Parties are citizens of different states and amount exceeds $10,000.
3. Suit is against U. S., U. S. agency, or U. S. employee in official capacity.
4. Provided by statute (ex. Civil Rights Act).

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